

No. 10517

United States
Circuit Court of Appeals

For the Ninth Circuit.

Vol

— 2354

THE STANDARD ACCIDENT INSURANCE
COMPANY OF DETROIT, MICHIGAN, a
corporation,

Appellant,

vs.

EDNA L. HEATFIELD, ,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Eastern District of Washington
Northern Division

FILED

SEP 18 1943

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

HARRY M. MOREY,
1015 Paulsen Building, Spokane, Washington
Attorney for Plaintiff, and Appellee

M. E. MACK,
832 Old National Bank Building, Spokane,
Washington
Attorney for Defendant, and Appellant.

In the Superior Court of the State of Washington
In and for the County of Spokane

No. 316
No. 109636

EDNA L. HEATFIELD,
Plaintiff,
vs.

THE STANDARD ACCIDENT INSURANCE
COMPANY OF DETROIT, MICHIGAN, a
corporation,
Defendant.

SUMMONS

The State of Washington, to the said The Standard Accident Insurance Company of Detroit, Michigan, a corporation, Defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of

the day of service, and defend the above entitled action in the court aforesaid, and answer the complaint of plaintiff and serve a copy of your answer on the undersigned attorney for plaintiff at the address below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which will be filed with the clerk of said court, a copy of which is herewith served upon you.

HARRY M. MOREY,

Attorney for Plaintiff.

[Endorsed]: Filed Dec. 10, 1942; Frank C. Nash,
Clerk

[Endorsed] Filed Jan 13 1943, A. A. LaFramboise, Clerk. [1*]

[Title of Superior Court and Cause]

COMPLAINT

Plaintiff complains of defendant and alleges:

I.

That on April 4, 1916, the defendant, a corporation authorized and licensed to do an insurance business in the State of Washington, for valuable consideration paid it by Augustus S. Heatfield, made, executed and delivered to him its certain accident insurance policy or contract number CAC 97R1387, and in consideration of premiums paid it each year, has kept said policy in force and effect and said policy was in force and effect on June 30th, 1942. That

the defendant has a true and correct copy of said contract or policy of insurance.

II.

That said policy of insurance provides in part as follows:

“The Standard Accident Insurance Company of Detroit, Michigan . . . in consideration of the representations contained in the application . . . and of the premiums . . . hereby insures Augustus S. Heatfield . . . against loss from bodily injuries effected directly, exclusively and independently of all other causes through accidental means except when intentionally self inflicted . . . subject to all conditions and limitations herein contained. . . . The principal sum, \$7500 . . . For loss of life principal sum, . . . All indemnities provided in this policy for loss other than that of time on account of disability will be paid within sixty days after receipt of due proof . . . Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured. [2]

“Copy of application: To whom do you wish policy to be payable in case of death? . . . Edna L. Heatfield, wife.”

III.

That plaintiff, Edna L. Heatfield was on June 30, 1942, the wife of Augustus S. Heatfield.

IV.

That on June 30, 1942, said Augustus S. Heatfield was driving an automobile on a narrow mountain

road between the town of Republic and Colville, Washington. That the driver of an automobile coming from the opposite direction drove same in such a manner as to force said Heatfield to drive his automobile off the road so that the wheels of his car were over and down the bank to such an extent that it was impossible for said Heatfield to gain sufficient traction to get his car back on the road. That the exact time of the event next above mentioned is not known to plaintiff, but it was sometime between four and six o'clock p. m. on said date. That said Augustus S. Heatfield was alone. That the incident next above mentioned happened at an isolated spot so that it was impossible for said Heatfield to get access to a telephone or assistance.

V.

That said Heatfield undertook to get said automobile back on the road and in so doing over-exerted himself and placed an unusual strain upon his heart. That immediately thereafter he became violently ill and that death resulted at sometime between eight p. m. June 30, and 8 a. m. July 1st, 1942, and that the death was proximately and exclusively and independently of all other causes by said over-exertion and strain. That death of the deceased was not intentionally self-inflicted.

VI.

That said policy of insurance further provides as follows:

“D. (4) Written notice of injury on which claim may be based must be given to the company

within twenty days after the date of the accident causing such injury.

“E. (5) Such notice given by or in behalf of the insured or beneficiary, as the case may be, to the Company at Detroit, Michigan, or to any authorized agent of the Company, with particulars sufficient to identify the insured, shall be deemed to be notice to the Company. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

“F. (6) The Company upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

“G. (7) Affirmative proof of loss must be furnished to the Company at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the Company is liable, and in case of claim for any other loss, with-

in ninety days after the date of such loss.

“H. (8) The Company shall have the right and opportunity to examine the person of the insured when and so often as it may reasonable require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.”

VII.

That Lamping & Company, a corporation, with offices in the Colman Building, Seattle, Washington, is and at all times herein mentioned was an authorized agent of the defendant, and that notice was given Lamping & Company of the death of said deceased and that claim would probably be made, and that attached hereto and made a part hereof and marked Exhibit “A” is a copy of said Notice.

That an autopsy on the body of deceased was had on July 10th and that the defendant was present through its physician and surgeon who concurred with the plaintiff in the selection of a pathologist.

That on July 30th, 1942, plaintiff furnished the defendant at his office in Detroit, Michigan with plaintiff’s unverified proof of loss and that attached hereto and made a part hereof and marked plaintiff’s Exhibit “B” is a copy of such proof.

That more than fifteen (15) days elapsed since receipt by defendant of plaintiff’s letter of July 30th, 1942, and no forms having been furnished by defendant for proof of loss required by it, plaintiff made a further sworn proof of loss, and attached hereto and

made a part hereof and marked Exhibit "C" is copy of such proof of loss which was forwarded to [4] Lamping & Company at Seattle, Washington, on August 25, 1942, and copy of which was also forwarded to defendant at its Detroit office.

That more than sixty days have expired since receipt by defendant of plaintiff's proof of loss of August 25, 1942, and *tht* the defendant has failed and neglected to pay the indemnity due plaintiff or to advise plaintiff whether indemnity will or will not be paid. That plaintiff has done all things required by the policy of insurance to be done by her.

Wherefore, Plaintiff prays for judgment against defendant in the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) and for interest thereon at the date of six per cent per annum from August 26, 1942, and for all of her costs and disbursements in this cause incurred.

HARRY M. MOREY

Attorney for Plaintiff
1015 Paulsen Building
Spokane, Washington

State of Washington,
County of Spokane—ss.

Edna L. Heatfield, being first duly sworn, deposes and says: That she is the plaintiff in the above entitled action; that she has read the foregoing complaint; is familiar with its contents, and the matters therein stated are true as she verily believes.

EDNA L. HEATFIELD

Subscribed and sworn to before me this 29th day of October, 1942.

HARRY M. MOREY

Notary Public in and for the State of Washington, residing at Spokane, Washington [5]

EXHIBIT A

Lamping & Company,
250 Colman Building
Seattle, Washington
Gentlemen:-

July 8, 1942

In re. Augustus S. Heatfield
Standard Accident Policy
#97R1387 Renewal number
706997.

Assured died near Curlew, Washington, on June 30th. I am attorney for the estate. He held an accident policy with the Illinois Commercial Men's Association and the Aetna Life carrying double indemnity. I was employed by the Executor and widow to represent them in the handling of the estate and also in the matter of collecting on the accident policies. That employment was made on July 1st. It was not until today that I learned that Mr. Heatfield had a policy with the Standard Accident Insurance Company as above numbered. Therefore I must advise you that there will probably be a claim made for payment under your accident policy.

The body is being held intact for an autopsy which

I intended to have performed on July 10th, until I knew that he had this policy with you. If you desire to have an autopsy made or to be represented when the autopsy is taken, and if you cannot make arrangements by July 10th, I think we can hold the body for a day or two longer. In any event, this is your notice that you may have an opportunity to have the autopsy if you desire. I wish you would advise me.

Very truly yours,

HARRY M. MOREY

HMM:M [6]

EXHIBIT B

July 30, 1942

Standard Accident Insurance Company
Detroit, Michigan.

Gentlemen:

Re: Accident policy of Augustus S.
Heatfield 97R-1387

I represent Thos. A. Heatfield, executor of the estate of Augustus S. Heatfield and Edna L. Heatfield, his widow.

Augustus S. Heatfield died near Curlew, Washington on June 30, 1942. It seems that he was driving his automobile on a mountain road between Curlew and Colville, Washington. An automobile approaching from the opposite direction crowded him off the road so that the right wheels of his car were down over the bank. Mr. Heatfield was alone at the

time of the incident and immediately attempted to get his car back on the road. In so doing he greatly overexerted and strained himself. Finally another motorist towed or pulled his car back down the road, and Heatfield then drove to a forest ranger camp where he got out of the car to get some water. Later the attendants at the camp heard a call for help and found Heatfield stretched out on the ground near his car. They took him into camp and put him to bed, and the next morning it was discovered that he had died.

It is the contention of the executor and widow that the above incidents establish a claim in accordance with the provisions of the above described policy, and claim is hereby made on you for payment of \$7,500.00 face value of the policy. On July 8, 1942 I wrote Lamping and Company in Seattle advising them that Heatfield had died and that claim would probably be made under the policy and that we intended to have an autopsy and giving an opportunity to the company to have an autopsy or to be present at the one we were making. Autopsy was held on July 10, 1942. Dr. Peter Reed attended the autopsy in your behalf. There were four persons interested in making of the autopsy: the widow, The Illinois Commercial Men's Association, Aetna Life Insurance Company, and your company. The pathologist's fee was \$50.00. I had an agreement with the Aetna and the Illinois Commercial Men's Association that the pathologist's fee would be divided between us and just before the autopsy was made, I was advised that M. E. Mack was representing your

company. Mr. Mack had no definite authority from you, but he indicated that the Standard Accident Insurance Company would pay its share of the [7] pathologist's fee. Therefore, at the proper time, I will ask you to reimburse me in the sum of \$12.50.

Will you please forward such proof of loss forms as you may require.

Very truly yours,

HARRY M. MOREY

HMM:MM

cc: Lamping and Co. [8]

EXHIBIT "C"

Proof of Loss Under Policy #CAC97R1387

State of Washington

County of Spokane—ss

Edna L. Heatfield, being first duly sworn, deposes and says: I am the widow of Augustus F. Heatfield who was insured with the Standard Accident Insurance Company under the terms of Policy number CAC97R1387 which policy was in full force and effect on June 30, 1942.

That on said date said Augustus S. Heatfield was driving his automobile between Curlew and Orient, Washington, and that he was forced off the road by a motorist coming from the opposite direction. That the right wheels of his automobile were over the bank. That he was alone. That it was necessary for him to complete his trip through Orient to Colville, Washington. That he endeavored to get the car back on the road; that in so doing he over exerted and strained himself and particularly his heart. That

after working a long time with the car another motorist towed him back on the road. That deceased then proceeded on his way to Orient and Colville but became so sick that he was unable to continue. That he was taken into a Forest Ranger's Camp where he continued to be sick. That he was assisted to bed by the men at the camp and was found dead the next morning.

That said Augustus S. Heatfield was in good physical condition prior to said June 30, 1942. That there was no evidence of any heart trouble.

That Dr. W. H. Gray, of Colville, Washington, who was called to examine the body by Coroner Osee Noble of Republic, Washington, stated that in his opinion deceased died of coronary occlusion caused by over-exertion.

That affiant believes that deceased died of coronary occlusion or some heart ailment, brought about by having been forced off the road and by over-exertion and strain in an attempt to get his automobile back on the road.

That demand is made on the Standard Accident Insurance Company for [9] payment of Seventy-five Hundred Dollars (\$7500.00) in accordance with the provisions of the above described policy.

EDNA L. HEATFIELD

Subscribed and sworn to before me this 25th day of August, A. D. 1942.

(Notarial Seal) HARRY M. MOREY

Notary Public in and for the
State of Washington, residing
at Spokane, Washington. [10]

[Endorsed]: Filed Dec. 19, 1942.

[Title of Court and Cause—State Court]

DEMURRER

Comes now the defendant and demurs to the plaintiff's Complaint on the following grounds:

I.

That the court has no jurisdiction of the person of the defendant or of the subject matter of the action.

II.

That the plaintiff has no legal capacity to sue.

III.

That there is a defect of parties, plaintiff or defendant.

IV.

That the complaint does not state facts sufficient to constitute a cause of action.

M. E. MACK

Attorney for Defendant.

Service accepted by receipt of copy hereof this 18 day of December, 1942.

HARRY M. MOREY

Attorney for Plaintiff.

[Endorsed]: Filed Dec. 23, 1942.

[Title of Court and Cause—State Court]

MOTION

Comes now the defendant and moves the Court to require the plaintiff to make her complaint more definite and certain as follows:

I.

- a. To make paragraph 4 more definite and certain by stating what wheels of the car were over and down the bank.
- b. The approximate distance from where the wheels that were down the bank were and those wheels that were not.
- c. Where between Republic and Coville, Washington, the [11] deceased was forced off the highway, as set forth in said paragraph 4.
- d. Give the name or names of those in the automobile coming in the opposite direction from the deceased that forced the deceased off the road.

II.

To make paragraph 5 of the complaint more definite and certain by stating therein what the deceased did "to get said automobile back on the road," as alleged in paragraph 5.

That in the event that said foregoing Motion be denied, this defendant moves this Court that the information requested in the foregoing Motion be furnished by the plaintiff by way of a Bill of Particulars. That in support of this Motion for Bill of Particulars this defendant makes the records, files and

proceedings in this cause a part of this Motion, as well as the affidavit of M. E. Mack hereto attached.

M. E. MACK

Attorney for Defendant

State of Washington
County of Spokane—ss.

I, M. E. Mack, being first duly sworn on oath, de-
pose and say: That I am the attorney for the defendant named in the foregoing Motion. That I know the contents of said Motion for a Bill of Particulars and that I personally know that the *Deft.* can not plead further to the Complaint without said information as required by the Bill of Particulars being first furnished.

M. E. MACK

Subscribed and sworn to before me this 18th day of December, 1942.

CHAS. P. LUND

Notary Public for the State of
Washington, residing at Spokane

Service accepted by receipt of copy hereof this 18 day of Dec. 1942.

HARRY M. MOREY
Atty for Pltf.

[Endorsed]: Filed Dec. 23, 1942. [12]

[Title of Court and Cause—State Court]

MOTION TO STRIKE

Comes now the defendant in the above entitled action and moves the Court to strike from the plaintiff's complaint that part of paragraph 7 beginning with the words "that on July" in the 12th line on page 4, and to the end of said paragraph.

To strike that part of paragraph 7 beginning with the words "that more than" in the 16th line on page 4 and ending with the words "required by it" in paragraph 7, on page 4 in line 19.

M. E. MACK

Attorney for Defendant

Service accepted by receipt of copy hereof this 18th day of December, 1942.

HARRY M. MOREY

Atty for Pltf.

[Endorsed]: Filed Dec. 23, 1942.

[Title of Court and Cause—State Court]

BOND FOR REMOVAL

Know All Men By These Presents:

That we, Standard Accident Insurance Company, a corporation, as Principal, and the Fidelity and Deposit Company of Maryland, a corporation, as Surety, are held and firmly bound unto Edna L. Heatfield, Plaintiff in the above entitled action, in the penal sum of Five hundred and no/hundredths Dollars (\$500.00), lawful money of the United States,

for the payment of which sum well and truly to be made, we bind ourselves, our respective successors and assigns, jointly and severally, firmly by these presents.

Upon Condition, Nevertheless, That

Whereas, the said Standard Accident Insurance Company, a corporation, Defendant herein, has petitioned the Superior Court of the State of Washington, in and for Spokane County, for the removal of the above entitled cause therein pending, wherein the said Edna L. Heatfield is the Plaintiff and the said Standard Accident Insurance Company, a corporation, is Defendant, to the United States District Court for the Eastern District of Washington, Northern Division. [13]

Now, if the said Standard Accident Insurance Company, a corporation, shall enter into the said United States District Court for the Eastern District of Washington, Northern Division, within thirty days from the date of filing said petition, a certified copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said United States District Court, if said Court shall hold that this suit is wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and effect.

(Seal) STANDARD ACCIDENT INSURANCE COMPANY

By Evart Lampint—Attorney in Fact

(Seal) FIDELITY AND DEPOSIT
COMPANY OF MARYLAND

By S. W. Holbrook—Attorney in
Fact.

Service accepted by copy being received this 18th day of December 1942.

HARRY M. MOREY
Atty. for Plaintiff

[Endorsed]: Filed Dec. 23, 1942.

[Title of Court and Cause—State Court]

NOTICE OF REMOVAL

You and each of you are hereby notified that on the 23rd day of December, 1942 the defendant, Standard Accident Insurance Company of Detroit, Michigan, a corporation, will file with the Clerk of the above entitled Court their petition and bond, copies of which are herewith served upon you, for the removal of the above entitled cause to the District Court of the United States, Eastern District of Washington, Northern Division.

You are further notified that on the 19th day of December, 1942, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, the above named defendant, will present their petition and bond to the above entitled cause, to-viz: to the presiding Judge thereof in the Court House in and for Spokane County, State of Washington, located in Spokane, Washington, for the purpose of having the Court sign an order accepting said petition and bond for removal of the said cause to the District Court of the United States, Eastern District of Washington, Northern Division. [14]

Dated, December 18th, 1942.

M. E. MACK

Attorney for Defendant

Service accepted by receipt of copy hereof this 18
day of December 1942.

HARRY M. MOREY

Atty. for Plaintiff

[Endorsed]: Filed Dec. 23, 1942.

[Title of Court and Cause—State Court]

PETITION FOR REMOVAL

Comes now the defendant above named and file
their petition and respectfully shows the Court:

I.

That this action was begun against your petitioner
in the Superior Court of Spokane County, Wash-
ington and is a civil action now pending in said
Court; that your petitioner was served with a Sum-
mons and Complaint by service upon the Insurance
Commissioner of Washington, at Olympia, Wash-
ington, on the 16th day of November, 1942, and it
has not filed its answer in said action and the time
for answering under the laws of the State of Wash-
ington will not expire until midnight on the 23rd
day of December, 1942.

II.

That the time said action was commenced, plain-
tiff was and now is a resident and citizen of the

State of Washington; that the defendant, Standard Accident Insurance Company of Detroit, Michigan, is a Michigan corporation, and that at the time said action was commenced was and now is a resident and citizen of Michigan only, being at the time of the commencement and at this time a corporation organized and existing under the laws of the State of Michigan,

III.

That the above entitled action is of a civil nature at law and the matter in dispute therein between the plaintiff and your petitioner, the plaintiff demanding seventy-five hundred dollars (\$7,500.00) of the defendant and costs which exceeds the sum of three thousand dollars (\$3,000.00) exclusive of interest and costs, and that the plaintiff and your petitioner [15] are the only parties to said action and that the defendant controverts, denies and resists said entire demand of the plaintiff.

IV.

That your petitioner herewith offers and files a bond as provided by the laws of the United States upon the removal of a cause from the State Courts to the United States Court, which said bond is submitted to this Court.

Wherefore, your petitioner, Standard Accident Insurance Company of Detroit, Michigan, prays this Honorable Court to accept said bond and that the said cause be removed to the District Court of the Eastern District of Washington, Northern Division,

and that this Court proceed no further in the premises.

STANDARD ACCIDENT INSURANCE COMPANY OF DETROIT, MICHIGAN

By M. E. MACK
Petitioner

And By M. E. Mack
Attorney for Petitioner

Service accepted by receipt of copy hereof this 18 day of December 1942.

HARRY M. MOREY
Attorney for Plaintiff

State of Washington
County of Spokane—ss.

M. E. Mack, being first duly sworn, on oath deposes and says: that he is an attorney of record in the above entitled action for the said petitioner, Standard Accident Insurance Company of Detroit, Michigan; that he resides at Spokane, Washington, where he has his law office at 832 Old National Bank Building; that the petitioner has no officer resident or present in the County of Spokane, State of Washington to make this verification; that this affiant makes this verification for and on behalf of your petitioner; that this affiant has read the foregoing Petition for Removal, knows the contents thereof and knows the facts therein stated to be true.

M. E. MACK

Subscribed and sworn to before me this 18th day of December, 1942.

EDWARD J. CROWLEY

Notary Public in and for
State of Washington, Resid-
ing at Spokane, Wash.

[Endorsed]: Filed Dec. 23, 1942. [16]

[Title of Court and Cause—State Court]

ORDER OF REMOVAL

The defendant, Standard Accident Insurance Company of Detroit, Michigan, a corporation, having within the time provided by law, filed their petition for the removal of this cause to the District Court of the United States, Eastern District of Washington, Northern Division, and having at the same time offered and filed therein their bond in the sum of Two Hundred Fifty Dollars, (\$250.00) with Fidelity and Deposit Company of Maryland, a corporation, good and sufficient surety pursuant to statute, and conditioned according to law, and the Court being advised in the premises,

Now, Therefore, this Court does accept said petition and approve said bond and the surety thereon, and it is hereby

Ordered that this cause be and the same is hereby removed to the District Court of the United States, Eastern District of Washington, Northern Division,

and that no other or further proceedings be had in this Court in this cause, except that the Clerk of this Court furnish the defendant on their application and at their expense a duly certified transcript of all the files and records in this action for filing in the District Court of the United States, Eastern District of Washington, Northern Division.

Done in open Court this 23rd day of December, 1942.

CHAS. W. GREENOUGH,
Judge

Service accepted by receipt of copy hereof this 18 day of December, 1942.

HARRY M. MOREY
Attorney for Plaintiff

Endorsed]: Filed Dec. 23, 1942.

[Title of Court and Cause—State Court]

State of Washington
County of Spokane—ss.

CERTIFICATE

I, Frank C. Nash, County Clerk and Clerk of the Superior Court of the State of Washington, for the County of Spokane, do hereby certify that the above and foregoing is a full, true and correct copy of the record in the above entitled case on file in this office, and which I have been directed to prepare and transmit to the District Court of the United States for the [17] Eastern District of Washington, Northern Division.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Superior Court, this 23rd day of December, A. D. 1942, at Spokane, Washington.

(Court Seal) FRANK C. NASH,
Clerk

By NELS PAULSEN,
Deputy

[Endorsed]: Filed Jan 13, 1943

[Title of Court and Cause—U. S. District Court]

NOTICE

To Edna L. Heatfield and to Harry Morey, her attorney:

You and each of you are hereby notified that the above entitled action was, by the Superior Court of Spokane County, Washington, on the 23rd day of December, 1942, *order* transferred to the District Court of the United States for the Eastern District of Washington, Northern Division, in conformity with petition for removal, bond for removal, notice of removal, etc., heretofore served upon you.

You and each of you are therefore notified that the transcript of said Superior Court of Spokane, County, Washington, has been filed with the above entitled Court on the 13th day of January, 1943, and the number of said action is 316. You and each of you will therefore govern yourselves accordingly.

M. E. MACK

Attorney for Defendant.

Service accepted and copy received this 13th day of January, 1943.

HARRY M. MOREY,
Attorney for Plaintiff [18]

[Title of Court and Cause—U. S. District Court.]
ORDER DENYING MOTION FOR DISMISSAL

The above entitled matter coming on regularly for hearing by the Court on the 26th day of January, 1943, on defendants' demurrer filed in the Superior Court of the State of Washington, in and for the County of Spokane, and considered a motion by defendant for dismissal in this court, and after hearing said motion and argument of counsel, and the court being fully advised in the premises, it is by the court

Ordered, that said motion for dismissal be and the same is hereby denied.

Done in open court this 28 day of Jan. 1943.

L. B. SCHWELLENBACH,
Judge.

Presented by

HARRY M. MOREY
Attorney for Plaintiff

Approved as to form

M. E. MACK
Attorney for Defendant

[Endorsed]: Filed Jan 28, 1943.

[Title of Court and Cause—U. S. District Court.]

ORDER DENYING MOTION TO STRIKE

The above entitled matter coming on for hearing by the Court on January 26, 1943, on defendant's motion to strike parts of Paragraph VII of plaintiff's complaint, and after hearing said motion and the argument of counsel, and the Court being fully advised in the premises, it is by the Court

Ordered, that said Motion to Strike be and the same is hereby denied.

Done in open Court this 28 day of Jan. 1943

L. B. SCHWELLENBACH

Judge

Presented by:

HARRY M. MOREY

Attorney for Plaintiff.

Approved as to form:

M. E. MACK

Attorney for Defendant.

[Endorsed]: Filed Jan 28, 1943. [19]

[Title of Court and Cause—U. S. District Court.]

**ORDER ON MOTION TO MAKE MORE
DEFINITE AND CERTAIN**

The above entitled matter coming on regularly for hearing on January 26, 1943, on defendant's motion to make plaintiff's complaint more definite and certain, and after hearing said Motion and the

argument of counsel, and the Court being fully advised in the premises, it is by the Court

Ordered, that said Motion be and the same is hereby granted as to sections a, b and c of Paragraph I and as to Paragraph II of said Motion, and denied as to section d of Paragraph I.

It is further Ordered that the information ordered to be furnished be furnished by way of a Bill of Particulars.

Done in open court this 28 day of Jan. 1943.

L. B. SCHWELLENBACH,
Judge

Presented by:

HARRY M. MOREY
Attorney for Plaintiff.

Approved as to form:

M. E. MACK
Attorney for Defendant.

[Endorsed]: Filed Jan 28, 1943.

[Title of Court and Cause—U. S. District Court.]

BILL OF PARTICULARS

Comes now the plaintiff and complying with the Order of the Court, answers defendant's Motion to Make the Complaint More Definite and Certain as follows:

I.

Answering section a of Paragraph I of the Motion, plaintiff states that to the best of her knowl-

edge and belief, all of the wheels of the automobile were to the right of the right hand wheel tracts in the road.

II.

Answering Section b of Paragraph I of the Motion, plaintiff states [20] that to the best of her knowledge and belief the distance between the left and right wheels is approximately the width of the car.

III.

Answering Section c of Paragraph I of the Motion, plaintiff states that to the best of her knowledge and belief the location on the road at which deceased was forced off the road was approximately two miles west of the Summit of the road which extends from Curlew to Orient, Washington, or approximately 10 or 12 miles east of the town of Curlew, Washington.

IV.

Answering Paragraph II of defendant's Motion, plaintiff states that to the best of her knowledge and belief deceased moved or attempted to move a log approximately 15 feet long and 8 to 10 inches in diameter, and moved or attempted to move large rocks and shoveled dirt and stones and did other acts in an effort to get his car back on the road.

HARRY M. MOREY

Attorney for Plaintiff
1015 Paulsen Building
Spokane, Washington

State of Washington
County of Spokane—ss.

Harry M. Morey, being first duly sworn, deposes and says: That he makes this verification for and on behalf of the plaintiff for the reason that plaintiff is not now in Spokane County to verify, and for the further reason that affiant has all of the information that plaintiff has; that he has read the foregoing Bill of Particulars, and the facts therein stated are true as he verily believes.

HARRY M. MOREY

Subscribed and sworn to before me this 29th day of January, 1943.

[Seal]

W. S. GILBERT

Notary Public in and for the
State of Washington, resid-
ing at Spokane

Copy of the foregoing Bill of Particulars re-
ceived this 29th day of January, 1943.

M. E. MACK,
By L.
Attorney for Defendant. [21]

[Title of Court and Cause—U. S. District Court.]

ANSWER

Comes now the defendant and for answer to plaintiff's complaint, alleges:

I.

Answering paragraphs I, II and III of said com-

plaint this defendant admits the allegations therein alleged.

II.

Answering paragraphs IV and V this defendant denies each and every allegation, matter and thing contained in paragraphs IV and V of the plaintiff's complaint.

III.

Answering paragraph VI this defendant admits the same.

IV.

Answering paragraph VII this defendant denies each and every allegation, matter and thing contained in paragraph 1 thereof, so denominated by this defendant.

Further answering paragraph VII and paragraph 2 thereof, so denominated by this defendant, this defendant admits the same.

Further answering paragraph VII this defendant denies each and every allegation contained in paragraph 3 thereof, so denominated by this defendant.

Further answering said paragraph VII relative to paragraph 4 thereof, so denominated by this defendant, this defendant admits that portion thereof reading as follows:

“That more than fifteen (15) days elapsed since receipt by defendant of plaintiff's letter of July 30th, 1942, and no forms having been furnished by defendant for proof of loss required by it,”

and further admits that the original of Exhibit

"C" attached to the complaint, was received on or about the 26th day of August, 1942, and denies each and every other allegation in said paragraph contained.

Further answering paragraph VII, being paragraph 5 thereof, so denominated by this defendant, this defendant admits that more than sixty (60) [22] days have elapsed since the receipt of the original of Exhibit "C", attached to this complaint, and further admits the remainder of said paragraph excepting that part reading as follows:

"That plaintiff has done all things required by the policy of insurance to be done by her,"

which latter quoted portions specifically denies each and every quoted portion thereof.

As a first complete and affirmative defense this defendant alleges:

I.

Said policy on which this action is based contains the following provision:

"S. Full compliance of the insured and beneficiary with all provisions of this policy is a condition precedent to recovery hereunder and any failure in this respect shall forfeit to the Company all right to any indemnity."

II.

That the plaintiff, or anyone in her behalf, totally failed to comply with paragraphs D (4) and E (5), or either of them, set forth in paragraph VI of plaintiff's complaint.

III.

That the policy on which this action is brought is exclusively a policy payable in the event of accidental death or bodily injury, effected directly, exclusively and independently of all other causes through accidental means except when intentionally self-inflicted, subject to all the conditions and limitations in said policy contained, and that the said plaintiff and no one for her or in her behalf gave any notice to this defendant in any manner whatsoever, or to any authorized agent of the company, of any bodily injury occurring through accidental means, for which this defendant is liable under said policy within the provision of D(4) or E (5) aforesaid or within the said twenty days provided in said provisions, and this plaintiff is not entitled to recover.

As a second complete and affirmative defense this defendant alleges:

I.

That under the aforesaid policy, before there could be a liability, it was necessary and essential, as set forth in paragraph II of plaintiff's complaint, that the death of the said Augustus S. Heatfield be effected directly, [23] exclusively and independently of all other causes through accidental means, except when intentionally self-inflicted.

II.

That there are no allegations in the plaintiff's complaint that the deceased came to his death through accidental means, as stated in the preceding paragraph.

As a third complete and affirmative defense defendant alleges:

I.

This defendant makes a part of this third defense paragraph 1 of the first affirmative defense the same as though it were set out herein in full.

II.

That the plaintiff, and no one for or in her behalf, ever furnished to the defendant proof of loss within ninety (90) days from June 30, 1942, as required by G (7) as set forth in paragraph VI of the plaintiff's complaint, as is required in said paragraph and the last portion thereof. That by reason of said failure plaintiff is not entitled to recover.

Wherefore this defendant prays that the plaintiff's complaint be dismissed and that the defendant have and recover its costs and disbursements.

M. E. MACK

Attorney for Defendant

State of Washington
County of Spokane—ss.

I, M. E. Mack being first duly sworn, on oath deposes and say: That I am the attorney for the defendant named in the foregoing Answer. That no officer or agent of the defendant is at this time in Spokane County, Washington, to verify this Answer. That I know the contents of said Answer and believe the same to be true.

M. E. MACK

Subscribed and sworn to before me this 4th day of February, 1943.

[Seal]

GLENN E. CUNNINGHAM

Notary Public for the State
of Washington, residing at
Spokane.

Service accepted and copy received this 5th day of February, 1943.

HARRY M. MOREY,
By DIM

Attorney for Plaintiff

[Endorsed]: Filed Feb. 8, 1943. [24]

[Title of Court and Cause—U. S. District Court.]

REPLY

Comes now the plaintiff and reply to defendant's Answer, admits, denies and alleges as follows:

Replying to the First Affirmative Defense, the plaintiff

I.

Admits the allegations of Paragraph I of the First Affirmative Defense.

II.

Denies each and every allegation, matter and thing contained in Paragraph II of the First Affirmative Defense.

III.

Admits "that the policy on which this action is

brought is—a policy payable in the event of accidental death or bodily injury effected directly, exclusively and independently of all other causes through accidental means except when intentionally self-inflicted, subject to all the conditions and limitations in said policy contained" and denies each and every other allegation, matter and thing contained in said Paragraph III.

Further replying to Paragraph II and III of the First Affirmative defense, the plaintiff alleges that although plaintiff, on or about July 8, 1942, knew that Augustus S. Heatfield had an accident policy with the defendant company, and although effort had been made by her to find said policy, it was not until more than twenty days after the death of said Augustus S. Heatfield, to-wit, on or about August 11, 1942, that the insurance policy was found and placed in her possession, and that it was not until said named date that plaintiff knew the specific provisions of said policy relative to giving notice to the defendant.

Replying to the Second Affirmative Defense, the plaintiff

I.

Denies that there are no allegations in plaintiff's complaint that the deceased came to his death through accidental means as provided in said policy.

Replying to the Third Affirmative Defense, the plaintiff

I.

Admits paragraph I thereof. [25]

II.

Denies each and every allegation, matter and thing contained in Paragraph II of the Third Affirmative Defense.

Wherefore, having replied to defendants answer, plaintiff prays for judgment against the defendant as prayed for in her complaint.

HARRY M. MOREY

Attorney for Plaintiff
1015 Paulsen Building
Spokane, Washington

State of Washington
County of Spokane—ss.

Harry M. Morey, being first duly sworn, deposes and says: That he is the attorney for the plaintiff in the above entitled actiⁿ; that he makes this verification for and on behalf of the plaintiff for the reason that the plaintiff is not now within the State of Washington; that he has read the foregoing Reply; is familiar with its contents and the matters therein stated are true as he verily believes.

HARRY M. MOREY

Subscribed and sworn to before me this 23d day of February, A. D. 1943.

[Seal]

W. C. LOSEY

Notary Public in and for the
State of Washington, re-
siding at Spokane, Wash-
ington

Copy of the foregoing Reply received this 23d day of February, 1943.

M. E. MACK,
By L.
Attorney for Defendant

[Endorsed]: Filed Feb 23, 1943. [26]

[Title of Court and Cause—U. S. District Court]

**INTERROGATORIES TO BE PROPOUNDED
TO DEFENDANT**

Interrogatories propounded by the plaintiff to the defendant and to be answered by the defendant or any officer thereof competent to testify as a witness in its behalf. The answers to be made, signed and sworn to and returned and used at the trial of the above entitled action as provided by the statutes of the United States and the rules of Federal procedure.

Interrogatory No. 1. I will ask the person who makes answer to these interrogatories to state his name, age and his official capacity with the Standard Accident Insurance Company of Detroit, Michigan.

Interrogatory No. 2. Is it not a fact that Lamping and Company, a corporation, was on June 30th, 1942, and ever since that date has been an authorized agent of the Standard Accident Insurance Company of Detroit, Michigan?

Interrogatory No. 3. If you have answered interrogatory No. 2 in the negative, and if Lamping

and Company has been named authorized agent of The Standard Accident Insurance Company of Detroit, Michigan, since June 30, 1942, please state the date on which it was made such authorized agent.

Interrogatory No. 4. Is it not a fact that on June 30, 1942 and ever since that date Lamping and Company had one of its offices in the city of Seattle, Washington?

Interrogatory No. 5. Is it not a fact that the original or copy of a letter of which the attached copy marked Exhibit "A" is a true copy of the substance and words used, has been received at the Home Office of the [27] Standard Accident Insurance Company of Detroit, Michigan?

Interrogatory No. 6. If you have answered interrogatory No. 5 in the affirmative is it not a fact that Lamping and Company of Seattle, Washington sent the Home Office of the defendant company the original or copy of said letter?

Interrogatory No. 7. If you have answered interrogatory No. 5 in the affirmative please state the date on which the original or copy of said letter was received at the Home Office of the defendant company.

Interrogatory No. 8. Is it not a fact that the original of a letter of which the attached copy marked Exhibit "B" is a true and correct copy of the substance and words used, was received at the Home Office of the defendant company?

Interrogatory No. 9. If you have answered interrogatory No. 8 in the affirmative please state

the date that said letter was received.

Interrogatory No. 10. Will you please attach the exhibits "A" and "B" that are attached to these interrogatories to your answers to the interrogatories.

Original of the foregoing interrogatories Nos. 1 to 10 received this 12nd day of February, 1943.

M. E. MACK

Attorney for defendant, The
Standard Accident Insur-
ance Company of Detroit,
Michigan.

(Clerk's Note: Here follows copy of Exhibit "A" to complaint at page 6 of this transcript.)

(Clerk's Note: Here follows copy of Exhibit "B" to complaint at page 7 of this transcript.)

[Endorsed]: Filed Feb. 15, 1943. [28]

[Title of Court and Cause—U. S. District Court.]

**ANSWERS TO INTERROGATORIES PRO-
POUNDED TO DEFENDANT BY PLAINTIFF, AND STIPULATION**

It Is Hereby Stipulated by the respective parties to this cause, Harry M. Morey representing the plaintiff, and M. E. Mack representing the defendant, as follows:

That the said Interrogatories may be answered by M. E. Mack for and on behalf of the defendant with the same force and effect as though an-

swered by an official of the defendant, and that the same may be used in evidence by either party to this proceeding, and that Interrogatory 1 therefore need not be answered.

Dated this 19th day of February, 1943.

HARRY M. MOREY

Attorney for Plaintiff

M. E. MACK

Attorney for Defendant

Answering Interrogatory 2, the answer is
Yes.

Answering Interrogatory 4, the answer is
Yes.

Answering Interrogatory 5, the answer is

It is a true copy of the words used, and a copy
thereof was received by the defendant at its Home
Office at Detroit, Michigan, July 20, 1942.

Answering Interrogatory 6 the answer is
a copy of Exhibit A was sent to the Home Of-
fice of the defendant company by Lamping & Co.
and received by it there July 20, 1942.

Answering Interrogatory 7, the answer is
a copy of said letter was received at the Home
Office of the defendant company July 20, 1942.

Answering Interrogatory 8, the answer is
the original letter marked Exhibit "B" is a true
copy of the words used and was received at the
Home Office of the defendant company at Detroit,
Michigan August 3, 1942.

Answering Interrogatory 9, the answer is
August 3, 1942.

Answering Interrogatory 10, the answer is
Yes.

M. E. MACK,
Attorney for Defendant

Copy of Answers to Interrogatories and Stipulation, received this 19th day of February, 1943.

HARRY M. MOREY
Attorney for Plaintiff

[Endorsed]: Filed April 14, 1943. [29]

[Title of Court and Cause—U. S. District Court.]

DEMAND FOR JURY

To: Standard Accident Insurance Company of Detroit, Michigan, and to M. E. Mack, its attorney, and to Aram A. LaFramboise, Clerk of the above entitled Court:

You and each of you will please take notice that plaintiff respectfully demands trial of the above entitled action by jury, and the Clerk is respectfully requested to set this case on the trial docket as a jury trial.

HARRY M. MOREY
1015 Paulsen Building
Attorney for Plaintiff

Copy of the foregoing Demand for Jury received this 2d day of March, 1943.

M. E. MACK,
By L
Attorney for Defendant.

[Endorsed]: Filed Mar 3, 1943. [30]

In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision.

No. 316

EDNA L. HEATFIELD,

Plaintiff,

vs.

STANDARD ACCIDENT INSURANCE COM-
PANY of Detroit, Michigan,

Defendant.

Before The Honorable L. B. Schwellenbach,
Judge, and a Jury duly impanelled and Sworn. On
April 14, 15, 1943. At Spokane, Washington.

Appearances: For the Plaintiff: Mr. Harry M.
Morey, Counsel. For the Defendant: Mr. M. E.
Mack, Counsel. Reporter: J. J. Cole.

STATEMENT OF FACTS [31]

On this 14th day of April, 1943, the above enti-
tled cause coming on for hearing and for trial before
the Honorable L. B. Schwellenbach, Judge of the
above styled Court, and a Jury to be impanelled
and sworn to try the same, and all parties having
announced ready for trial, the following proceedings
were had, testimony taken and exhibits introduced.

Whereupon: A Jury was impanelled and sworn
to try the cause.

Whereupon: The opening statement for the Plain-
tiff was made by Mr. Morey as follows:

Mr. Morey: May it please the Court, Ladies and Gentlemen of the Jury:

It is my privilege and my duty at this time to try to outline to you the facts in this case as they will be presented by the Plaintiff. It is not my privilege and I would not exercise it if I had it, to attempt at this time to argue the case. I am simply trying to give you the facts and issues in the case so as we present the testimony you may have a clearer picture than you now have.

My client, Mrs. Edna L. Heatfield, is the widow of August S. Heatfield, or 'Gus' Heatfield, as he was more commonly called. He held and had for many years, held an accident policy with the Standard Accident Insurance Company. One of the provisions of that policy is that the Company will pay if death is sustained, is affected directly, exclusively and independently of all other causes through accidental means, and that, Ladies and Gentlemen [32] of the Jury, will probably be the question in this case, whether or not this death was caused by accidental means. The policy had its usual provisions for the giving of notice to the insurance company in the event of an accident or the death under the policy and we will offer evidence to you to show that about eight days after this accident we, in writing, advised the authorized agent of the company and that two or three days thereafter the insurance company through its doctor, attended an autopsy which we advised the company would be held. The policy provides that after the company receives such notice, it will furnish the assured with proof of loss forms,

and the evidence will show that no proof of loss forms were received in fifteen days as provided in the policy, and the policy also provides within ninety days the party may submit his or her own proof of loss, and the evidence will show within ninety days we did submit this proof of loss.

Now Mr. Heatfield at the time of his death, which was June 30th, 1942, was a man sixty-five years of age. He had been Special Agent for an insurance company for many years. His duties were office duties and calling upon his agents, not a man, the evidence will show, accustomed to any hard manual labor. The evidence will show he was in good physical condition; that he had not had any heart trouble. The evidence will show that at the autopsy it was disclosed that Mr. Heatfield had a form of arterio-sclerosis, or hardening of the arteries, not necessarily, the evidence will show, of and by itself sufficient [33] to cause his death. On June 30th, 1942, the evidence will show he left home in his accustomed health for a trip up to Republic and Colville, traveling by car. We will have evidence from a witness in Republic, who saw him at noon, or early after noon of that date, and Mr. Heatfield was in the same, the evidence will show, in his accustomed state of health. Then he attempted to go over, what is called the 'hump,' from Curlew to Orient and then down to Colville. The evidence will show that the road was a dirt road, narrow, winding mountain road and going through a very isolated country where there were no farms, service stations, garages, *no* anything so far as habitation

was concerned at the point where he met this accident. We will endeavor to introduce in evidence that his car was forced off this narrow road and he was alone. We will endeavor to introduce evidence he was of a nervous temperament and that he endeavored, evidently, to get this automobile back on the road, doing all of that work by himself. We will attempt to introduce evidence that his efforts in so doing were unusual efforts for him, out of the ordinary, unexpected, and that while he was so laboring alone a motorist came along and had to tow his car, pull his car back on the road. We will have evidence from this motorist and his wife that when they arrived Mr. Heatfield was in an exhausted state of health, worn out, holding his hand over the front part of his body. He complained of heart pains and that he said he had worked there for two hours and had had to rest part of the time, and wore himself out. We will then have [34] evidence that he went about two miles to a forest ranger's camp to get some water and started from there and the boys heard his car stop and went out to see what was the matter and there he was stretched on the ground suffering in agony sick, and the evidence will show the boys took him into the cabin—that no medical aid was called—he didn't want any. They put him to bed and when they went to call him the next morning, he had died, and, as I stated a short time ago, an autopsy was performed which showed that the condition of Mr. Heatfield's body, and having proved those things, and the Court

having instructed you in the law, we will ask for a verdict at your hands.

Judge Schwellenbach: Do you wish to make your statement at this time?

Mr. Mack: My intention is to reserve it at this time.

Whereupon: An adjournment was taken to 1:45 P. M., at which time, all parties present, the trial resumed. [35]

LEWIS MURPHY,

a witness called for and on behalf of the Plaintiff, having been duly sworn, testified as follows on

Direct Examination

By Mr. Morey:

Q. State your name, please.
A. My name is Lewis Murphy.
Q. Where do you reside?
A. In Republic, Washington.
Q. What is your business or occupation there?
A. I am a County Clerk at the present time.
Q. Of Ferry County? A. Correct.
Q. How long have you lived in Republic, Mr. Murphy? A. Since the year 1907.
Q. Did you know August S. Heatfield, commonly known as 'Gus' Heatfield? A. Yes.
Q. How long had you known Mr. Heatfield?
A. I will have to do a little figuring there. Since about 1915, possibly.
Q. Did you have occasion to see Mr. Heatfield the latter part of June, 1942? A. Yes.

(Testimony of Lewis Murphy.)

Q. Do you remember the day you saw him?

A. I figured out the date, it was June 30th.

Q. Where did you see him? [36]

A. In the insurance office in Republic.

Q. Some agent for him?

A. He was talking to his agent there, his local agent, and I met him there.

Q. About what time of day was that?

A. I wouldn't be too sure, between 2 and 3 in the afternoon.

Q. I see. About how long a time would you say you spent with Mr. Heatfield that afternoon?

A. I was somewhat busy, it wouldn't have been over twenty minutes.

Q. You visited with him, did you?

A. Yes.

Q. What was the physical appearance of Mr. Heatfield, as you observed at that time?

A. As I recall, he was the same old Gus Heatfield.

Q. Was there any evidence of any physical ailment? A. No.

Q. No shortness of breath?

A. Not that I observed at all.

Q. I am not asking you to tell us the conversation, but was there some discussion between you and Mr. Heatfield as to the route he was going to take from Republic to the place he was going?

A. He inquired—

Mr. Mack: I object to that—

Judge Schwellenbach: Just answer that ques-

(Testimony of Lewis Murphy.)

tion 'yes' or 'no'. Your objection goes to the [37] question?

Mr. Mack: I object to the question as hearsay.

Judge Schwellenbach: Objection overruled.

Question read: 'I am not asking you to tell us the conversation, but was there some discussion between you and Mr. Heatfield as to the route he was going to take from Republic to the place he was going'?

A. Yes.

Q. I think I will ask you did you advise him the route he was to take?

A. I sent him to people who would know all about the condition of the road.

Q. I see. And you think you broke away from him there at Republic possibly about three?

A. It wouldn't have been later than that.

Q. By the way, Mr. Murphy, how far is it from Republic to Curlew?

A. I would say about twenty-one miles.

Q. Did you have occasion to observe the kind of car Mr. Heatfield was driving? A. Yes.

Q. What kind of a car was it?

A. As I recall, it would be a black coupe.

Q. What make?

A. I didn't observe that.

Mr. Morey: That is all.

Mr. Mack: That is all.

(Witness excused.) [38]

RALPH HARRINGTON,

a witness called for and on behalf of the Plaintiff, having been duly sworn, testified as follows on

Direct Examination

By Mr. Morey:

Q. State your name.

A. Ralph Harrington.

Q. Where do you reside?

A. Seven miles northeast of Curlew, Washington.

Q. What road do you live on?

A. The Deer Creek road.

Q. That road runs from what town to what town?

A. From Curlew—well, it don't come from no town on the other side, it comes into the main highway the other side, that side of Orient.

Q. Then the highway runs down to Colville?

A. Yes.

Q. How long have you lived in that country?

A. About nine years.

Q. What is your occupation?

A. A school bus driver and farmer.

Q. You own a farm out there on that road?

A. Yes.

Q. On June 30th, 1942, what town had you been to, you and your wife?

A. We had been to Colville.

Q. And then tell us what road you followed to go from Colville to your home.

A. We took the highway down to the foot of

(Testimony of Ralph Harrington.)

Summit [39] Hill, and then come across the summit on the regular Colville road.

Q. That's the road you have been talking about?

A. Yes.

Q. Now did you, on that trip, observe an automobile that was off the road? A. Yes.

Q. At the point where you observed the automobile off the road, Mr. Harrington, I wish you would tell the Jury what kind of a road it was.

A. It was a new built road, only been built about a year since they built it over, and there was soft shoulders and narrow road.

Q. About how wide was the road at that point where you found the car off the road?

A. Oh, about, I imagine, sixteen foot road bed there.

Q. Were there any fences along the roadway?

A. No.

Q. Now that road leads up from Curlew—how far from Curlew do you live? A. Seven miles.

Q. And the farms are scarce from Curlew up to your place? A. Yes.

Q. When you get east of your place going over to Orient, are there any houses at all?

A. Not until you get clear over on the other side—one mile up on the other side there is one there.

[40]

Q. No service stations or garages? A. No.

Q. Where is this place you found this disabled car with reference to the road, how far East of Curlew? A. About eleven miles.

(Testimony of Ralph Harrington.)

Q. How good a view did you have of this car before you actually came to it?

A. Well, I would say about three hundred feet.

Q. Then what was there in the road that obstructed the view?

A. We come around the curve.

Q. Now, I wish in your own words, you would tell the Jury what you observed. Tell them first, if you will, where that car was.

A. The car was clear over the road. Clear over the shoulder. One front wheel was clear off the shoulder of the road and the back hind wheels, one was clear down over the shoulder and the other in the soft shoulder of the road.

Q. By the way, about how high is that shoulder there? A. Well—

Q. If you want to compare it with some object in the room—

A. About so high (indicating) somewhere near that, about six feet.

Q. Did you observe any individual there, a man there? A. Yes.

Q. Where was this man when you first saw him?

A. He just stepped out from behind the car into the road to stop me, to pull him out. [41]

Q. What kind of a car was that?

A. It was a dark black Ford coupe, I would say '40 model.

Q. Now what was the appearance of this man you saw there?

(Testimony of Ralph Harrington.)

A. Well, he seemed pretty tired and fagged out and seemed worried.

Q. Was he alone? A. Yes.

Q. Anybody else around there to help him?

A. No.

Q. What did you do then?

A. I stopped and then I got out and looked at the car to see what condition it was in.

Q. All right. Now then, if you will tell us, please, sir, what condition was the car in?

A. Well, the car was there to stay without help. It was down over the bank in the soft dirt and there was a rock under the running board in front of the rear wheel and that dirt was soft on that side and it just kept burying down. He had evidently tried to build it up and get it up on this boulder to get back on the road, but it was so soft all his efforts was lost whenever he tried it.

Q. Had a shovel been used?

A. Yes, he had a shovel.

Q. Where was the shovel?

A. It was in the back of the car, laying in back of the car—the lid was up. [42]

Q. Could you see where he had shoveled?

A. You could see where he had shoveled dirt, all right.

Q. You spoke about a rock that was under the running board. What did you do with that rock?

A. I got down and dug a little dirt away from it and pulled it out from under the car to get it out of the way.

(Testimony of Ralph Harrington.)

Q. Then what did you do?

A. Then I tried to turn around but the road was so narrow I couldn't turn around, so I backed up and hooked on to him with the front of my car and backed up and pulled him up thataway, pulled him onto the road.

Q. About how long did it take you to go from Colville to the place where you found this disabled car?

A. I would say about an hour and a half, probably.

Q. I am handing you a picture marked for identification "Plaintiff's Exhibit A", and I will ask you if that looks like the road at the place where you found this disabled car.

A. Yes, it looks like the road there.

Mr. Morey: I offer Plaintiff's exhibit A in evidence.

Mr. Mack: We have no objection.

Judge Schwellenbach: It may be admitted. Do you want to show that to the Jury now?

Mr. Morey: I think I will, your Honor.

(Exhibit A passed to the Jury for examination.)

Mr. Morey: I think that is all. [43]

Cross Examination

By Mr. Mack:

Q. Have you got in mind exhibit A, the one you just saw without seeing it again? A. Oh, yes.

Q. You were, as I gathered from your state-

(Testimony of Ralph Harrington.)

ment, you were coming around that curve that shows in that picture. A. Yes.

Q. You didn't observe, obviously, until you turned around the curve, until you got pretty near around, this car.

A. No, I didn't notice nothing.

Q. When you got around it, you saw a man standing in the center of the road.

A. No, he come out from behind the car as I saw it, stepped into the road as I came around.

Q. He came from behind the car?

A. Yes, the car was sitting there. I couldn't tell whether he was behind it—it was from the car anyway.

Q. You couldn't see what he was doing through the car. A. No.

Q. You never saw anything he was doing—personally you never saw him doing a thing.

A. Well, no, not that I saw.

Q. Your car was coming toward the front end of his car, is that correct? A. Yes. [44]

Q. So that he was obviously on the opposite of the road you were.

A. Yes, on the opposite side.

Q. Where did you stop with reference to his car?

A. Oh, I got a little ways past it before I stopped dead still.

Q. How fast, about, were you going when you first saw it?

A. Twenty miles, maybe fifteen.

(Testimony of Ralph Harrington.)

Q. The highway was as good as it looks in the picture, exhibit A?

A. No, that picture, like all pictures, shows a better road than was there.

Q. Who was with you in this car?

A. My wife and three boys and my daughter.

Q. Did she get out with you?

A. Yes, they all got out.

Q. When you got out you did just what, please, sir, show us what you did after you got out.

A. I just looked it over to see what shape it was in and took the rock out so it wouldn't tear the fender and running board off.

Q. And then you pulled the car out?

A. Yes, after I got around to pull it. I backed up and tried to turn around but I couldn't.

Q. You had to back up your car some.

A. Yes.

Q. You say you had occasion to observe this gentleman [45] who was there? A. What?

Q. You had occasion to see him—observe him?

A. Yes.

Q. Just what character or sign did he make to stop you? A. He just held his hand up.

Q. And you saw the car then and the condition it was in.

A. Yes. I would have stopped anyway when he held his hand up.

Q. He didn't make any motions at all—just held up his hand? A. No, just held up his hand.

(Testimony of Ralph Harrington.)

Q. Was he standing in front of your car when he held up his hand? A. No.

Q. He was at the side of your car so you could go by? A. Yes.

Q. How close did you get to him, do you think, how close did you get to this man whoever he might be?

A. I got close enough he talked to me through the car window.

Q. Through what car window?

A. My own car.

Q. You didn't get any closer than that?

A. The window was down, I talked to him, he was right there at the window. [46]

Q. Then you got out of the car—what did you do then—just make arrangements to pull him out?

A. Yes.

Q. How long were you there, do you think, from the time you stopped until the time you left?

A. Oh, probably twenty minutes.

Q. You tried to turn around? A. Yes.

Q. And had to back up. A. Yes.

Q. How did you pull him out?

A. With the chain hooked from my bumper to his.

Q. You got behind his car? A. Yes.

Q. Did you do anything behind the car itself?

A. No.

Q. Did I understand you to say you just took out a stone that was in the front under his car?

A. That was the rear side—the rear wheel.

(Testimony of Ralph Harrington.)

Q. How big a stone was it?

A. Well, it was—I would say it was probably—must have been two feet long, maybe a foot wide, something like that.

Q. Would that stone in any way stop the progress of his car—was it sufficiently large enough for that? A. Oh, no.

Q. It was just a matter of your being cautious so that nothing would happen. [47]

A. He might have put the rock there so he could get on to it—I don't know.

Q. I am not asking you that. I am asking if you were just being cautious so that nothing would happen when you pulled him out.

A. Yes, that was the idea.

Q. Just where were the left front wheels of his auto?

A. Well, it was on the shoulder of the road, the left one.

Q. And the right front wheels, where were they?

A. Down over the shoulder, down next to the ditch.

Q. How close to the ditch? I don't know as I understand.

Question Read: "How close to the ditch?"

Q. So as to make it clear, I will hand you Plaintiff's exhibit A.

A. You see this is what I call the ditch, there is hardly no ditch there.

Q. What do you mean by the shoulder?

A. This right here—right at the edge of the road.

(Testimony of Ralph Harrington.)

Q. And the road was how wide?

A. I don't think it was over sixteen feet, it might not be that. I couldn't say for sure.

Q. In other words, this is your sixteen feet (indicating on photo). A. Yes.

Q. And what there would be over that sixteen feet, that is what you call the shoulder.

A. Well yes, this here. [48]

Q. So, as a matter of fact, there really isn't any shoulder there.

A. Oh, yes—this is about six feet high—this is the road—this was built up.

Q. I don't think you understand. Assuming the road is sixteen feet wide, how wide was the shoulder at the end of the road, if there was any?

A. You mean, how wide is this here?

Q. I am asking you what you mean by shoulder, how wide would be the shoulder of the road?

A. The shoulder is this part here, just the end of the road where you start for the bank.

Q. Does it cut down pretty sharply?

A. Yes, fairly steep.

Q. Now, with reference to the left front wheels, I mean the wheels, the nearest wheels to the road.

A. Right in here—this was a new road—this was soft—that's where he slid along and shoved the dirt in front of him.

Q. How close to the very edge of the road, including the shoulder, were the two front wheels where they were close to the road?

A. Well, the left wheel would be about maybe a

(Testimony of Ralph Harrington.)

foot from being on the hard packed part of the road and the other—

Q. And the hind one was where?

A. It was further down here set kind of wedge shaped.

Q. Clear over the shoulder? A. Yes. [49]

Q. And the automobile was approximately how long? A. About sixteen feet, or eighteen.

Q. And the width of the automobile was what?

A. About five feet—four or five.

Q. Could be in the neighborhood of six feet.

A. Yes.

Q. So, as a matter of fact, if the front wheel was just a foot from the edge or shoulder of the road, and the other hind wheel on the left side, or the same side, was a foot down, the others must be pretty near in the ditch.

A. Well, down in the rubbish in there.

Q. You said that had been put there to stay, I think you used that expression—

A. What I mean he was helpless, he couldn't get out without help.

Q. The only possible way he could get out was to be pulled out. A. Yes.

Q. Did you happen to observe this log?

A. I couldn't say that was exact log, but the road was all about the same right in there.

Q. Did you look to see how he got in that position? A. Yes.

Q. What time of day was it you came up there?

(Testimony of Ralph Harrington.)

A. Oh, about six—a quarter after—somewhere in there.

Q. You were there about twenty minutes?

A. I imagine. [50]

Q. When you attached your automobile bumper to his, can you tell us just about the direction you went?

A. Yes, I got as near frontwise of his car as possible so I could stay on the hard surface, then I tied the bumpers together, then started his motor, he did, and I started mine—and we put the clutch together and pulled out.

Q. You had to go quite a ways, did you, to straighten him up?

A. Yes, I backed quite a ways.

Q. About how far?

A. About twice or three times the length of the car.

Q. In the meantime, he was helping you guide his car? A. Yes.

Q. After you got him up on the road, he went on after you unhooked the chain? A. Yes.

Q. How close was the next nearest town that you just left just before you met his automobile?

A. Between twenty and thirty miles, I wouldn't say exactly.

Q. As you came down that road, did you notice anything else there, road camps or anything of that kind?

A. No, nothing, only the forest camp at the summit.

(Testimony of Ralph Harrington.)

Q. How far was that from the summit?

A. Well, he was about two miles, I guess.

Q. You don't know anything that happened after he went on and you went on? [51] A. No.

Q. I assume he thanked you. A. Yes.

Q. When you first drove up and got out, it was evident to you that no one man could ever get that automobile out. A. Yes.

Q. When had you gone over that road before that particular day, if you did?

A. How was that?

Q. When did you go over that same road before that? A. About eight that morning.

Q. Did he laugh and talk with you about his condition in the ditch? A. No.

Q. He didn't say anything about it?

A. All he said he just said—

Q. I am just asking if he said anything about it, I am not asking what he said. A. Yes—

Q. And you knew he was in a very bad predicament as far as the car was concerned?

A. Yes.

Q. What was the condition of the back of his car, how was it arranged?

A. Well, just pretty near as bad as the front, only it was down in more soft dirt there.

Q. I mean the condition of it—was the back open or [52] shut, did he have a place in the back you could open up? A. Yes.

Q. What was the condition of that?

(Testimony of Ralph Harrington.)

A. It was up. He shut it down before I pulled him out.

Q. Did you look into that back part?

A. Not particularly. I just see there was a shovel in there.

Q. Where was the shovel?

A. It was just laying in the back.

Q. What?

A. Laying in the back of the car.

Q. What else did you see in there, if anything?

A. Oh, jack and tools, I suppose—I didn't pay much attention.

Q. You looked at the ground and all you noticed was that particular rock in front.

A. Yes, and a big limb—it really wasn't a limb it was a pole.

Q. That was also under the automobile?

A. Down by the wheel where it would have torn the fender off.

Q. The fender had been torn off? A. No.

Q. I thought you said where the fender had been torn off.

A. I said if I hadn't moved the stick it would have torn the fender off. [53]

Q. The fender on the left on the side of the car going the opposite way than you were going?

A. Yes, he was going the opposite way.

Q. What was the size of that log?

A. Oh, about the size of your arm.

Q. Is that all you did? A. Yes, that's all.

Q. Did you see him do any digging?

(Testimony of Ralph Harrington.)

A. No, that was done when I got there.

Q. So you don't know what he did at all?

A. No.

Q. What was the condition of the wheel on the side closest to the road when you got there—was there anything around that wheel other than this branch?

A. There was nothing there that I seen.

Q. You said your wife was with you.

A. Yes.

Mr. Mack: I believe that is all.

Re-Direct Examination

By Mr. Morey:

Q. Did you, two or three days after this accident, talk to a young man? A. Yes.

Q. Did you know who he was? A. Yes.

Q. Who was he?

A. Heatfield—I don't know his first name. [54]

Q. Did you tell him where this car had been off the road?

Mr. Mack: I object to that as irrelevant and immaterial and hearsay.

Judge Schwellenbach: Objection overruled.

A. As near as I could.

Mr. Morey: That is all.

Re-Cross Examination

By Mr. Mack:

Q. When did you see this young man?

A. Oh, it was two or three days—I don't remember just now.

Q. At your place or on the road?

(Testimony of Ralph Harrington.)

A. He came to my place.

Q. That's how far from this particular place where the car was?

A. Oh, it's three miles anyway.

Q. You are sure you had the right place that you talked to him and you told him where it was as near as you could? A. As near as I could.

Q. You didn't go with him? A. No.

Q. How old was this man—what do you think would be his age about? A. What man?

Q. The man whose car you helped out of the ditch. A. I would say around sixty. [55]

Q. When you looked at him, just what did you observe?

A. Oh, he just looked tired and wore out.

Q. He looked tired. What do you mean by wore out?

A. Well, he was—well, he had done about all he could do.

Q. He still got in the car and drove the car away. Did you and he joke about it at all?

A. No.

Mr. Mack: I believe that is all.

Witness Excused.

MRS. FLOY HARRINGTON,

a witness called for and on behalf of the Plaintiff, having been duly sworn, testified as follows on

Direct Examination

By Mr. Morey:

Q. State your name, please.

A. Mrs. Floy Harrington.

Q. You are the wife of the gentleman who was just on the stand? A. Yes.

Q. You folks are living up on the Curlew-Orient road? A. Yes.

Q. On June 30th, 1942, where had you and your husband been? A. We had been in Colville.

[56]

Q. Now, Mrs. Harrington, did you, also, see a car off the road about two miles from the forest ranger's camp? A. Yes.

Q. Where was the place with reference to the forest ranger's camp—east or west of the camp?

A. It was west of the camp.

Q. About how far west?

A. Well, I would say, oh, maybe more than two miles—approximately two miles.

Q. Approximately two miles? A. Yes.

Q. How far east of Curlew would that point be?

A. About eleven miles, I should judge.

Q. About what time of day did you arrive there?

A. It was about 6:15.

Q. You looked at your watch?

A. Yes—my oldest boy looked at his watch.

(Testimony of Mrs. Floy Harrington.)

Q. What is the character of the country around there?

A. Rough and broken and sand—and quite a few old logs where there had been timber.

Q. Were there any farms within a mile or two?

A. Not any closer than our place.

Q. I wish you would tell the Court and Jury what you observed there. Your first observation of the car and the man. Just give your own observation of it.

A. As I came along—we had to come around quite a sharp corner and just as we came around the corner we noticed this car in the ditch and Mr. Harrington started to pull out [57] in order to offer help and just then a man came out and waved us to stop, and asked us to help him out of the ditch. We stopped then and got out of the car to see if we could pull him out.

Q. I wish you would tell us the physical appearance of the man.

A. Well, it was quite a hot day that day and he seemed quite hot and tired, really exhausted would be my word—he looked like he was all in.

Q. I wish you would tell us his appearance—was he holding his hands in any way?

A. Not right then, but after Mr. Harrington went to turn around to pull him out of the ditch—he was standing there with his hands in front of his body, kind of like this (indicating) and he said he had an awful pain—

(Testimony of Mrs. Floy Harrington.)

Mr. Mack: I object to that, if your Honor please—

Judge Schwellenbach: Objection overruled.

Q. Where did you say he had his hands?

A. Kind of like this as near as I can remember.

Q. About the abdomen?

A. Yes—like this (witness places hands to the left center of abdomen).

Q. All right. Now then, Mrs. Harrington, Mr. Harrington at that time was making arrangements to get the car back on the road. A. Yes. [58]

Q. You were talking to this man? A. Yes.

Q. Tell us what he said.

Mr. Mack: Now I object to that, if your Honor please, incompetent, irrelevant and immaterial, self-serving and hearsay.

Judge Schwellenbach: Is it part of the res gestae? That is the question.

Mr. Mack: It is not part of the res gestae.

Judge Schwellenbach: My offhand impression is it is part of the res gestae, and she is entitled to give that part of the conversation. I will be glad to hear from you.

Mr. Mack: If I might do this, if your Honor please: I don't want to waive my rights to it, but I don't care to argue it at this time, unless the Court insists upon it. If the ruling can be reserved.

Judge Schwellenbach: It isn't the kind of testimony I'd like to reserve a ruling on and then ask the Jury to disregard it, so if you want to argue it

(Testimony of Mrs. Floy Harrington.)

now, I will be glad to excuse the Jury for a few minutes and let you argue it.

Mr. Mack: I am more interested in the witness than I am in the Jury, frankly, I am more interested in the witness than I am in the Jury.

Judge Schwellenbach: I don't understand what you mean. [59]

Mr. Mack: It doesn't make much difference whether the Jury hears my argument, or not, but it would be devastating if the witness heard it.

Judge Schwellenbach: Then I will ask the witness to retire.

Mr. Mack: That will be just dandy.

Judge Schwellenbach: The Jury may retire to the Jury room. Mrs. Harrington, will you step outside?

(Discussion.)

Judge Schwellenbach: As to the objection to that part of the testimony which refers to a statement by the deceased as to how he happened to be off the road, the objection is sustained, and Mrs. Harrington will not testify as to what Mr. Heatfield told her about the way the accident happened, that he was pushed off the road by some woman driver. Now she can testify to all other matters. I have a feeling that we have no sufficient proof of the length of time that ensued between the time he was first off the road, if he was, and the time of the conversation to be able to establish if the res gestae rule should apply. He was there alone for a considerable period of time. A man might very

(Testimony of Mrs. Floy Harrington.)

well be thinking about what happened. When he started out trying to get his car out of there undoubtedly he wasn't in the physical shape he was in when they came up and I think it may be assumed the physical condition progressed as he worked trying to get the car up on the road. Any person confronted with getting a car out of the ditch very well forms in his own mind a conclusion it was the fault of [60] some woman driver, and such statement might not be a spontaneous one.

The other portion is admissible under the res gestae and under the rule permitting a witness to testify as to the statements made by a deceased person as to his physical suffering.

(Witness Harrington having been brought into the Court Room, was admonished by the Court as follows):

Judge Schwellenbach: You understand, Mrs. Harrington, you can testify as to what he said about having these pains—the first time he had any pains in his heart—but you cannot testify as to what he told you how he happened to go off the road.

Mr. Morey: I appreciate that ruling. It is a very important part of this case for the Plaintiff and I can well realize the Court's opinion in hesitating to let this witness testify to what Mr. Heatfield told her about how he was forced off the road, and solely for the sake of the Record, I want to make an offer by Mrs. Harrington, this witness, to testify that the deceased told her that a woman driver forced him off the road.

(Testimony of Mrs. Floy Harrington.)

Mr. Mack: We except to the ruling of the Court and further object to the offer of proof as irrelevant, incompetent, self-serving and no part of the res gestae.

Judge Schwellenbach: The objection to the offer of proof is sustained.

Mr. Mack: I wonder if I understood [61] the Court correctly. I would like to clear it up in my own mind. This evidence is being admitted because a witness can testify as to the suffering which he observed. I agree with that.

Judge Schwellenbach: And as to statements a person makes as to his suffering. I am admitting it on both grounds—part of the res gestae, a spontaneous exclamation made at the time with no thought—he didn't know he was going to die and an action be started on accidental death policies, and also, that it was a spontaneous statement as to his physical condition.

(Discussion.)

Judge Schwellenbach: You may ask the witness a question as to what he said—(to the witness) and you tell all but the part as to what he said how his car happened to be off the road.

Q. Tell what he said.

A. Well, as I said, he was holding his hands sort of like that and he said 'I have an awful pain—I have a pain in my heart, the first time in my life I ever had trouble with my heart'. He said it was so hot and he got so tired and exhausted he had to *lie* down. He said he had been there an

(Testimony of Mrs. Floy Harrington.)

hour and I asked him if he tried to get his car out—

Mr. Mack: I object to what she said, it is not part of the res gestae.

(Objection overruled.)

A. —and he said, yes he had tried to back up and tried to go forward but he couldn't go either way. He said his car [62] was stuck there and he tried to get it out and he couldn't by himself.

Mr. Morey: I think that is all.

Cross Examination

By Mr. Mack:

Q. You say you had some conversation with this man, and your husband was there at the time?

A. No, he was trying to turn the car around.

Q. What was the conversation, where was the conversation, where was he, what did your husband do with reference to trying to turn the car around?

A. He backed up toward the curve and tried to turn around, but the road was too narrow. While he was doing that, I was standing by Mr. Heatfield's car talking to him.

Q. How far away was your husband then?

A. Well, it was a considerable distance from the curve to the car.

Q. Now, have you told us all you recall of that conversation, or is there anything else you can remember now. You told us all the conversation—how he tried to back the car up and go forward and he couldn't do it.

A. Yes.

(Testimony of Mrs. Floy Harrington.)

Q. And he said he had a pain in his heart and never had any trouble before?

A. That's what he told us.

Q. And he held his hands down here?

A. Kind of like that. [63]

Q. He didn't hold it up here (indicating)?

A. Not that I remember.

Q. And he said he had been there approximately—he said he had been there an hour?

A. He said he had been there for two hours. He said he laid down an hour.

Q. And he had been there a total of two hours?

A. Yes.

Q. And it was a pretty hot day?

A. Yes, real hot.

Q. Did he show you where he was lying down?

A. No, he just said he had been lying down on the side of the road in the shade—there were some trees over there on the opposite side.

Q. What did you see your husband do?

A. He got out and looked at the car and saw it was impossible to get it out without pulling it out. He got down and dug at a rock to move it out of the way so he could get out.

Q. When he was moving the car out where were you?

A. There is a curve, as we said before, we sent the oldest boy up there to watch for cars coming that way, and I went the other way to watch for cars coming that way—we wanted to stop all cars so they wouldn't run into us.

(Testimony of Mrs. Floy Harrington.)

Q. How old is your oldest boy?

A. He is thirteen, will be thirteen the 28th day of this month.

Q. Did he get out of the car? [64]

A. Oh, yes, we took all the children out and put them up on the bank so they wouldn't get hurt.

Q. Was the oldest boy with you when you had this conversation?

A. No, he was watching his father.

Q. Helping his father? A. Yes.

Q. Did you happen to look in the back of Mr. Heatfield's car? A. No, I did not.

Q. But you had the conversation at the back of Mr. Heatfield's car?

A. Standing toward the back, yes—standing there talking.

Q. Your husband hadn't done anything toward pulling the car out.

A. He was trying to turn around so he could pull it out.

Q. He hadn't done anything toward pulling it out?

A. He hadn't hooked onto the car, if that is what you mean.

Q. Was the back of this man's car open or closed? A. I couldn't say.

Q. So that we understand each other—he said he had attempted to move the car forward and move it back.

(Testimony of Mrs. Floy Harrington.)

A. Yes, he had started the motor up and tried to get it up on its own power.

Q. That's about all you recall that Mr. Heatfield said? [65]

A. Yes, as to his condition and what he had been doing.

Q. And about his trouble with his heart.

A. Yes.

Q. How old a man do you think he was?

A. Well, he seemed to be quite an old man—I am not good at judging people's age.

Q. How long were you people there?

A. Oh, twenty minutes, maybe half an hour.

Q. Did you see the gentleman go away?

A. Yes.

Q. Did you go before he did or afterward?

A. Well, as he started to get into his car—before he went to get in his car he asked me if we had any water, he would like to have a drink, and I told him no. I said if he stopped at the forest ranger's camp they would give him a drink, and I told him if there wasn't anybody in the camp, I told him where there was a spring, and asked him if he would be all right, and he said 'Yes', and we watched him drive away.

Q. How far was that forest camp away?

A. Two miles or a little more.

Q. You don't know what he did after that?

A. No, only what I have heard.

Q. You say he looked exhausted—I think you mentioned that word? A. Yes.

(Testimony of Mrs. Floy Harrington.)

Q. What made you think that—what was his appearance?

A. Well, you can usually tell by looking at a person [66] whether they are tired or look tired, or don't feel good, or overheated, or something.

Q. Just what was he doing, if anything?

A. He was just standing kind of dejected like, like you would if you had been working hard and were overtired, or overworked, or dog tired—overheated.

Q. Did you notice anything about his breathing?

A. Well, not necessarily.

Q. So he was breathing normally?

A. Well, I wouldn't say.

Q. You wouldn't say he was?

A. I wouldn't say he wasn't or I wouldn't say he was.

Q. You were with him quite awhile?

A. I talked to him, yes.

Q. And if he was breathing pretty heavily, you would have seen it.

A. Oh, yes, if he was panting or anything, I would have noticed it.

Q. What made you think he was exhausted if he wasn't breathing pretty hard?

A. Because he looked that way.

Q. What kind of a car was he driving?

A. A black coupe, a Ford.

Mr. Mack: That is all.

Witness excused. [67]

Mr. Morey: I offer in evidence Plaintiff's policy of insurance, exhibit marked for identification, Plaintiff's exhibit B.

Mr. Mack: No objection.

Judge Schwellenbach: Plaintiff's exhibit B admitted.

Mr. Morey: I would like at this time to read a part of this policy to the Jury.

(Reads into the record.)

Mr. Morey: May the record show that Plaintiff's exhibit C is the document marked Plaintiff's exhibit A in the interrogatories, which will subsequently be introduced. And I offer it now in evidence.

Mr. Mack: We object to this for the reason it totally fails to serve any purpose in the case whatsoever. It is incompetent, irrelevant and immaterial and proves no fact or statement or allegation of Plaintiff's complaint whatsoever. If the Court will permit me I will be glad to submit at this time—

Judge Schwellenbach: I don't care to hear further argument on this. The objection is overruled, and exhibit C is admitted.

Mr. Morey: I would like to read this to the Jury.

Judge Schwellenbach: As I understand it, exhibit C is also the same as exhibit A attached to the Complaint.

Mr. Morey: Yes, your Honor. [68]

Mr. Morey: Exhibit C read as follows:

‘July 8, 1942

‘Lamping & Company
250 Colman Building
Seattle, Washington
Gentlemen:

In re. Augustus S. Heatfield
Standard Accident Policy
#97R1387 Renewal number
706997.

‘Assured died near Curlew, Washington, on June 30th. I am attorney for the Estate. He held an accident policy with the Illinois Commercial Men’s Association and the Aetna Life, carrying double indemnity. I was employed by the Executor and the widow, to represent them in the handling of the Estate and also in the matter of collecting on the accident policies. That employment was made on July 1st. It was not until today that I learned that Mr. Heatfield had a policy with the Standard Accident Insurance Company as above numbered, therefore, I must advise you that there will probably be a claim made for payment under your accident policy.

‘The body is being held intact for an autopsy which I intended to have performed on July 10th, until I knew he had this policy with you. If you desire to have an autopsy made or to be represented when the autopsy is taken, and if you cannot make arrangements by July 10th, I think we can hold the body for a day or two longer. In any event, this is your notice that you may have an opportu-

nity to have the autopsy if you desire. I wish you would advise me.

Very truly yours,

HARRY M. MOREY.' [69]

Mr. Mack: Defendant at this time moves to strike exhibit C for the reasons urged to the introduction thereof.

Judge Schwellenbach: Motion denied.

Mr. Morey: I now offer in evidence a document marked for identification Plaintiff's exhibit D, being a letter dated July 30th, 1942, which is the original of Plaintiff's exhibit B attached to the interrogatories propounded to the Defendant, and the original of Plaintiff's exhibit B attached to the Complaint. I offer that in evidence.

Mr. Mack: I object to that as incompetent, irrelevant and immaterial and sustains no allegation of the complaint. This is dated July 30th. It is not sworn to. I am at a loss to understand it. He contends it is a notice of some kind. It is clearly too late for the ordinary notice. If he contends it is a proof of loss it does not comply with the requirements. It is just a statement in a letter dated July 30th and it could not in any event be any proof of anything in this case. I don't know what the purpose of it is.

Judge Schwellenbach: The objection is overruled, it will be admitted. And the Jury is instructed with reference to this exhibit, and the last

exhibit that was admitted in evidence not as proof of what they say—they are statements made by Mr. Morey and are admitted under the provisions of the policy requiring certain notice to be given and you will consider them for that purpose [70] only. The mere fact that certain statements made in there is not proof the statements are true of the way in which the thing occurred, but are admissible as notice only, and not as proof of facts as alleged.

Mr. Morey: I will read this.

‘July 30, 1942

‘Standard Accident Insurance Company
Detroit, Michigan

Gentlemen:

Re: Accident policy of

Augustus S. Heatfield 97R-1387

‘I represent Thomas A. Heatfield, Executor of the Estate of Augustus S. Heatfield, and his widow.

‘Augustus S. Heatfield, died near Curlew, Washington, on June 30th, 1942. It seemed that he was driving his automobile on a mountain road between Curlew and Colville, Washington. An automobile approaching from the opposite direction crowded him off the road so that the right wheels of his car were down over the bank. Mr. Heatfield was alone at the time of the incident and immediately attempted to get his car back on the road. In so doing he greatly over exerted and strained himself. Finally another motorist towed or pulled his car down the road and Heatfield then drove to a forest ranger camp where he got out of the car to get some water. Later the attendants at the camp heard

a call for help and found Heatfield stretched out on the ground near his car. They took him into camp and put him to bed and the next morning it was discovered that he had died.

'It is the contention of the Executor and widow that [71] the above incidents establish a claim in accordance with the provisions of the above described policy, and claim is hereby made on you for payment of \$7500, face value of the policy. On July 8, 1943, I wrote Lamping & Company in Seattle, advising them that Heatfield had died and that claim would probably be made under the policy and that we intended to have an autopsy and giving an opportunity to the company to have an autopsy or to be present at the one we were making. Autopsy was held on July 10, 1942. Dr. Peter Reid attended the autopsy in your behalf. There were four persons interested in the making of the autopsy, the widow, the Illinois Commercial Men's Association, the Aetna Insurance Company and your company. The Pathologist's fee was \$50. I had an agreement with the Aetna and the Illinois Commercial Men's Association that the Pathologist's fee would be divided between us and just before the autopsy was performed I was informed Mr. *Mr.* M. E. Mack was representing your company. Mr. Mack had no definite authority from you but he indicated that the Standard Accident Insurance Company would pay its share of the Pathologist's fee. Therefore, at the proper time, I will ask you to reimburse me in the sum of \$12.50.

‘Will you please forward such proof of loss forms as you may require?

Very truly yours,
HARRY M. MOREY.’

Mr. Mack: I move to strike this for the same reason as to the first one, self-serving declarations. [72]

Judge Schwellenbach: The same ruling.

Mr. Morey: Mr. Mack, have you found the original proof of loss? Will you stipulate this is a copy?

Mr. Mack: We have no objection to any copy. I have mislaid it somewhere. I thought I had it somewhere.

Mr. Morey: I thought you did, too.

Whereupon: Copy marked Plaintiff’s exhibit E for identification.

Mr. Mack: If the original is found it may be substituted.

Mr. Morey: Let the record show I am now offering in evidence a document marked for identification ‘E’ which is a copy of exhibit C attached to the Complaint.

Mr. Mack: I have no objection to that.

Judge Schwellenbach: It may be admitted.

Whereupon: Plaintiff’s exhibit E, proof of loss, read into the record.

Judge Schwellenbach: The Jury will understand this is in the same category as the last two exhibits. The policy provides that proof of loss must be submitted, and it is admitted solely for the purpose of

submitting proof to the effect that such proof of loss was filed. It is not proof of any of the facts set forth and should not be considered by you as proof of any of *the* [73]

Mr. Morey: I have some interrogatories—do I have these marked as an exhibit?

Judge Schwellenbach: Those interrogatories do not go in as an exhibit.

Mr. Morey: Then I will read them.

Judge Schwellenbach: You can have Mr. Mack read the answers and you read the questions.

Mr. Morey: This document is called 'Interrogatories propounded by the Plaintiff to the Defendant and to be answered by the Defendant or any officer thereof, competent to testify as a witness in its behalf. The answers to be made, signed and sworn to, and returned and used at the trial of the above entitled action as provided by the statutes of the United States and the rules of the Federal procedure.'

Interrogatory No. 1. I will ask the person who makes answer to these interrogatories to state his name, age and his official capacity with the Standard Accident Insurance Company of Detroit, Michigan.

The said interrogatories may be answered by Mr. M. E. Mack for and on behalf of the Defendant with the same force and effect as though answered by an officer of the Defendant and the same may be used in evidence by either party to this proceeding and interrogatory No. 1 thereof need not be

answered. February 19, 1943. Signed by both Counsel.

Interrogatory No. 2. Is it not a fact that Lamping and Company, a corporation, was on June 30th, 1942, and ever since that date has been an authorized agent of the [74] Standard Accident Insurance Company of Detroit, Michigan. A. Yes.

Interrogatory No. 3. If you have answered interrogatory No. 2 in the negative and if Lamping and Company has been named authorized agent of the Standard Accident Insurance Company of Detroit, Michigan, since June 30, 1942, please state the date on which it was made such authorized agent.

A. No answer.

Interrogatory No. 4. Is it not a fact that on June 30th, 1942, and ever since that date Lamping and Company had one of its offices in the city of Seattle, Washington? A. Yes.

Interrogatory No. 5. Is it not a fact that the original or copy of a letter, of which the attached copy marked exhibit "A" is a true copy of the substance and words used, and has been received at the home office of the Standard Accident Insurance Company of Detroit, Michigan?

A. It is a true copy of the words used and a copy thereof was received by the Defendant at its home office Detroit, Michigan, July 20th, 1942.

Interrogatory No. 6. If you have answered interrogatory No. 5 in the affirmative, is it not a fact that Lamping and Company of Seattle, Washington, sent the home office the original or copy of said letter?

A. A copy of said letter was received at the home office of the Defendant company July 20th, 1942.

The Court: That exhibit "A" refers [75] to exhibit "C" in evidence here.

Mr. Morey: Yes.

Interrogatory No. 7. If you have answered interrogatory No. 5 in the affirmative, please state the date on which the original or copy of said letter was received at the home office of said Defendant company.

A. A copy of said letter was received at the home office of the Defendant company July 20, 1942.

Interrogatory No. 8. Is it not a fact that the original of a letter of which a copy marked exhibit "B" is a true and correct copy of the substance and words used, was received at the home office of the Defendant company?

A. The original letter marked exhibit "B" is a true copy of the words used and was received at the home office of the Defendant company, Detroit, Michigan, August 3, 1942.

Interrogatory No. 9. If you have answered interrogatory No. 8 in the affirmative, please state the date said letter was received.

A. August 3rd, 1942.

Interrogatory No. 10. Will you please attach the exhibits "A" and "B" that are attached to these interrogatories to your answers to the interrogatories? A. Yes. [76]

Mr. Morey: At this time I ask that the Deposi-

tion of Thomas A. Heatfield be published, opened and published.

Judge Schwellenbach: Very well, it may be published. Was this taken on notice or stipulation?

Mr. Morey: This was taken on notice. The notice is attached to the Deposition. I think it is proper to read the notice at this time.

Judge Schwellenbach: Is there any question as to the method of taking the Deposition?

Mr. Mack: No, I think not, it is in the usual form. Any objections may be made here at the trial.

Judge Schwellenbach: Do you stipulate the questions and answers may be read without reading the notice?

Mr. Mack: That is correct.

Deposition of

THOMAS A. HEATFIELD

Being duly cautioned and sworn by the Notary Public to tell the truth, the whole truth and nothing but the truth, testified as follows:

Examination by Sugarman:

Q. What is your name?

A. Thomas A. Heatfield.

Q. Where do you live?

A. 1556 Merced Street, Richmond, California.

Q. Mr. Sugarman: I suppose it will be stipulated that that is over one hundred miles from the place of action. [77]

(Deposition of Thomas A. Heatfield.)

Mr. Mack: That is all right.

Q. You are the son, are you not, of Augustus S. Heatfield, is that correct? A. Yes.

Q. What was your father's occupation?

A. He was a representative of the Hanover Fire Insurance Company.

Q. Just briefly, Mr. Heatfield, what did he do?

A. His work consisted of supervising local agents of the company.

Q. And for that purpose was it necessary for him to do any manual labor of any form?

A. No.

Q. When did you last see your father?

A. About January 19, 1942.

Q. And where was it that you saw him?

A. At Coulee Dam, Washington.

Q. Did you have an opportunity at that time to observe the state of his health, his general appearance?

Mr. Mack: To which we object as incompetent, immaterial and irrelevant. The state of his health January, 1942, does not establish his condition in June of 1942, or June 30th.

Judge Schwellenbach: Do you intend to connect this up by further testimony as to the condition immediately prior to June 30th?

Mr. Morey: No, not immediately prior. I don't know why Mr. Sugarman asked that question, to be [78] perfectly frank with the Court. I think I will have other evidence showing the general

(Deposition of Thomas A. Heatfield.)
health of Mr. Heatfield, probably a year prior to this event—

Judge Schwellenbach: If you connect this up from time to time to just before the time he died, it is competent, but if you just leave this witness and no other testimony, then I think the objection is well taken. A lot of things can happen between January and June.

Mr. Morey: I think at this time I would like to have it go in with the understanding I intend to offer some evidence of his condition up to the time he died.

Mr. Mack: It doesn't make any difference what he intends to do—this man isn't competent to testify.

Judge Schwellenbach: What about?

Mr. Mack: He asked him what his condition physically was on a date, in January, 1942, and that has nothing to do with what occurred in June.

Judge Schwellenbach: The objection is overruled.

A. Well, he stayed with us a day and a night, yes.

Q. And what was the state of his appearance?

Mr. Mack: The same objection.

Judge Schwellenbach: The same ruling.

A. He seemed perfectly normal to me at that time.

Q. Now, how old was your father when you last saw him? [79]

A. He was sixty-five, I believe.

(Deposition of Thomas A. Heatfield.)

Q. And do you *know* he was when he died?

A. He was still sixty-five.

Q. What was the date of your father's death?

A. June 30th, 1942.

Q. After your father died—you went up to the State of Washington when he died, did you not?

A. Yes.

Q. And did you at that time go to the vicinity of the city of Curlew, Washington. A. Yes.

Q. Now what was the reason that you went there?

A. I went there to recover his personal property that had been with him at the time of his death and to investigate the evidence of his death.

Q. Now what day was it when you arrived in that vicinity? A. It was July 3rd.

Q. 1942? A. 1942, yes.

Q. Did you have an opportunity at that time to visit the Curlew-Orient highway, or roadway?

A. Yes, I drove over that road.

Q. By the Curlew-Orient road, I mean, of course, the road that connects those two cities in Washington. What kind of road is that?

A. It is a narrow, crooked, mountainous road.

Q. Is it a dirt road? A. Yes. [80]

Q. Not paved? A. Not paved.

Q. I want to refer especially to the portion of that road which is about eleven miles from Curlew, the point which I think we can refer to as where your father—I will withdraw that question. Just

(Deposition of Thomas A. Heatfield.)

refer to it as eleven miles from Curlew, how wide is it?

A. I would say probably twelve or thirteen feet.

Q. And did you have an opportunity to observe a place along the road at about that spot where there were automobile tracks that went off the road?

Mr. Mack: To which I object as irrelevant, incompetent and immaterial, unless it is shown it has some connection with this particular automobile. If he found tracks there on a road eleven miles long, doesn't prove a thing.

The Court: I will reserve a ruling on that question. Maybe we better wait until we get the authorities I have sent for.

(Discussion.)

The Court: Do you intend to call Dan Abraham?

Mr. Morey: No, your Honor, Mr. Abraham is down in Missouri, in the Army. I will call a witness from the forest service station, who knows what was said.

The Court: I will sustain an objection of the testimony of this witness until such time as you can connect it up with the place. You said you intended [81] to call some forest ranger, from the forest ranger station. There are one or two questions you might pick out and put in afterwards if I do sustain the objection throughout.

Mr. Morey: Very well, your Honor. May I ask at this time the Deposition of W. T. Selbach be opened and published?

The Court: May we have the same stipulation waiving any formality as to the notice?

Mr. Mack: As to the notice, I certainly will, if your Honor please. I think it might be well at this time, if the Court would indulge us, we will certainly finish the case tomorrow anyway, I would like to be heard to see if I understand, myself, just what this thing is all about. I might make it clearer. The allegations of the Complaint and the statement of Counsel definitely was that the notice was given within the twenty days provided by this policy. The rule unquestionably is if they have not done that and without some way of exonerating or excusing it, they cannot recover. There is no deviation from that rule. Now, he comes back and says in his reply the reason he didn't give that notice within the twenty days was because they didn't have the policy, didn't know the terms of the policy and therefore, somebody—must have been the Defendant—waived it. If they are not inconsistent statements they are very much on the border line. He says he didn't give that notice and now he wants to prove to the Court the reason he didn't give the notice because there was a condition in the policy, [82] the terms of which they didn't know, although they knew all about the policy. I say, if your Honor please, that establishes certainly this position, it's an admission, a very definite admission, that the twenty-day notice was not given and then he attempts to prove now why that was overlooked without any allegation of necessity for that excuse, and I *don't* this Deposition is admissible for any

purpose except the purpose it is now an admission on the part of the Plaintiff they didn't give this notice. They are bound by that admission and it will not avail them now to attempt to introduce evidence that they did not have the policy.

The Court: You are objecting to the introduction of this testimony?

Mr. Mack: Yes sir.

Mr. Morey: May I be heard on that?

The Court: No. I will overrule the objection.

Mr. Morey: In view of the fact that the statement by Mr. Mack was made in the presence of the Jury, however, I do wish——

The Court: You want to make an argument to the Jury, too?

Mr. Mack: That wasn't my purpose.

Mr. Morey: Anyway, that argument can come in when we are entitled to argue it.

The Court: If it is a question for the Jury to pass upon as to the effectiveness of this notice, they will be instructed with reference to it and have [83] an opportunity to pass on it.

Mr. Morey: Now, then, Mr. Mack, may the Deposition be read?

Mr. Mack: That is up to the Court.

The Court: I ruled that it could be read, yes.

Mr. Morey: I believe you stipulated this was taken on notice.

Mr. Morey: (Reading from Deposition)

'Be it remembered, that on April 2nd, 1943, at 10:00 o'clock, A. M., pursuant to written notice dated March 18, 1943, which is attached hereto, per-

sonally appeared before me, Emma L. MacHugh, a Notary Public in and for the City and County of San Francisco, State of California,

W. T. SELBACH

a witness called on behalf of the Plaintiff, who deposed in answer to written interrogatories attached to the notice as follows: Interrogatory No. 1. Please state your name, age, and business or profession.

‘A. Answering interrogatory No. 1 witness testified as follows: William Taylor Selbach, age 33, insurance general agent, employe of Selbach & Deans.

‘Interrogatory No. 2 was August S. Heatfield an employe of Selbach & Deans on June 30th, 1942?

‘A. Mr. Augustus S. Heatfield was an employe of Selbach & Deans up to the time of his death, which occurred I believe sometime on June 30th, 1942.

‘Interrogatory No. 3 Where was your business office on June 30th, 1942?

‘A. 340 Pine Street, San Francisco, California.

[84]

‘Interrogatory No. 4. Did you go to Spokane, Washington, subsequent to June 30th, 1942? If so, give the date that you arrived in Spokane.

‘A. Yes. Arrived in Spokane on or about the 10th day of August, 1942.

‘Interrogatory No. 5. What was the purpose of your visit to Spokane?

(Deposition of W. T. Selbach.)

‘A. I came to Spokane to take over the affairs of Selbach & Deans and to hire a successor to Mr. Heatfield.

‘Interrogatory No. 6. Did you make a search of the desk that Augustus S. Heatfield had used in his business?

‘A. It took em about 10 days to go through all files and segregate all Mr. Heatfield’s personal property from that of our business and among other things I came across an accident policy made out in Mr. Heatfield’s name issued by Standard Accident Insurance Company of Detroit, Michigan, and which was stuck in a pigeon-hole in Mr. Heatfield’s desk among miscellaneous papers.

‘Interrogatory No. 8. Please state what you did with that policy after it came to your attention.

‘A. Upon discovery of the policy, I telephoned Mrs. Heatfield and told her I found the policy and she suggested I turn it over to Mr. Morey, her attorney. The exact date I turned the policy over to Mr. Morey, I do not recall, but it was sometime during the latter part of August, 1942.

‘(signed) W. T. SELBACH [85]

‘State of California,
City and County of San Francisco—ss.

‘I hereby certify that on the second day of April, 1943, at 10:00 o’clock A. M., before me, Emma L. MacHugh, a Notary Public in and for the city and county of San Francisco, State of California, in the lobby of the building at 233 Sansome Street, San Francisco, personally appeared W. T. Selbach,

pursuant to written notice dated March 18, 1943, a witness called in behalf of Plaintiff to answer written interrogatories attached thereto.

'I further certify that the witness was first duly cautioned and sworn to testify to the truth and the whole truth and nothing but the truth and that the Deposition was written out and submitted to the witness for examination and was read and signed by him and that the Deposition is a true record of the testimony given by said witness.

'I further certify that the said Deposition has been retained by me for the purpose of sealing it in an envelope and directing the same to the Clerk of the above entitled Court as required be law.

'I further certify that at the time of the taking of the Deposition the witness was in the City of San Francisco, State of California, and outside of the District where the above entitled action is being tried and more than one hundred miles from the place of the trial, and that I am not a relative or an employee, or attorney, or counsel for any of the parties, or relative or employee of such attorney or [86] counsel and am not financially interested in the action.

'In witness whereof I have hereunto set my hand affixed my seal of office, this second day of April, 1943.

'(signed) EMMA L. MacHUGH
Notary Public in and for the City and County of
San Francisco, State of California, my com-
mission expires January 15, 1944.'

Mr. Mack: Defendant at this time moves the Court to strike all the testimony appearing in the Deposition, or, in the event that is not done, the Plaintiff be made to elect on whether or not this case is based on having given notice or whether it is based on E. (5) which appears in the Complaint as reason or excuse for failure to give that notice. These provisions are diametrically opposed. I can't say it any clearer. Either they have given notice correctly or they have not and they should now be required to.

The Court: This motion raises the same question raised by the objection made prior to the reading of this Deposition. It raises, first, a question of pleading. It is undoubtedly true the Plaintiff in his Complaint did not plead the excuse for the failure to give notice within the twenty-day period. The theory on which the Complaint is based is that notice was given within the twenty-day period. However, in the answer the Defendant stands on the affirmative defense that no such notice was given and by way of reply the allegations of which this Deposition is introduced to support was inserted in the pleadings under the [87] liberty allowed under the new rules of Federal procedure by which it may be possible for Counsel for Plaintiff right now to amend his Complaint by inserting these allegations. I see no reason why I should sustain the objection on the ground of the pleadings. It is in the pleading as part of the reply to the affirmative defense. Then you come to the second question as to the admissibility of the testimony

itself. The policy requires that notice be given within twenty days. This death is alleged to have occurred June 30th, 1942. Now it is the contention of the Plaintiff here that notice was given July 8, 1942, within twenty days. I am not passing on the question whether or not that was sufficient notice, or whether it is a question of fact sufficient to be submitted to the Jury. However, if that notice of July 8th, 1942, was not sufficient notice it is a nullity, then the other provision of the policy which makes it possible to serve notice after the expiration of twenty days becomes effective, and on the basis of that this testimony is offered as an excuse. Whether or not it is sufficient excuse, whether that is a question of law to be decided by the law, or a question of fact, to be determined by the Jury, I am not at this point able to determine. But it is admissible evidence under the allegations of the reply. There is nothing inconsistent between the two. Plaintiff alleges she served notice on July 8th. If I decide as a matter of law that was not sufficient notice or should decide as a matter of fact it was not sufficient notice, then she may offer testimony as to the notice of July 30th, 1942. For those reasons I overrule the objection and deny the motion to strike. [88]

Whereupon: Court adjourned, to convene at 10 A. M., April 15, at which time, all parties present, the trial resumed.

THOMAS A. CALLAN,

a witness called for and on behalf of the Plaintiff, having been duly sworn, testified as follows, on

Direct Examination

By Mr Morey:

Q. State your name, please.

A. Thomas A. Callan.

Q. Where do you live?

A. At Boyds, Washington.

Q. Where is Boyds?

A. About thirty-two miles north of Colville.

Q. What were you doing up there?

A. I work for the forest service during the summer, that is, most of the summer.

Q. In the winter time, you do what?

A. I stay at home—I worked out all winter at the * * * plant.

Q. Do you have your own place up there?

A. Yes, sir.

Q. A small farm? A. Yes.

Q. Are you married? A. Yes.

Q. How long have you lived up there?

A. About all my life.

Q. On June 30th, 1942, I take it you were working at the forest service camp. [89]

A. Yes, sir, I was.

Q. On what road is that?

A. Between Curlew and Kettle Falls.

Q. All right. Another point on that road is Orient. A. That's right.

Q. It is sometimes the Curlew-Orient road.

A. It is.

(Testimony of Thomas A. Callan.)

Q. Your camp was where with relation to the summit? A. Right on the summit.

Q. How many men were in your camp at that time?

A. Well, at that time only four besides myself.

Q. On that day, June 30th, 1942, did a gentleman call at your camp in a black Ford coupe?

A. Yes, he did.

Q. What time of day was it?

A. It must have been 6:30.

Q. And was he alone? A. He was alone.

Q. Just tell the Jury what happened from the time you first saw him from then on.

A. Mr. Mack: I object to that unless he limits him to what he saw. I have no objection to what he saw but any statements made at that time will be incompetent.

Q. I am not asking you to recite any statements, simply what you saw this gentleman do. I will ask you now to refrain from making any statements as to what this man made to you. [90]

A. This gentleman came to the camp and asked for a drink of water. We gave it to him and asked him to stay overnight. Well he seemed to want to go to his car which was about a hundred yards from where the camp was. We told him if he didn't feel well to call us and so he did and we went down and got him—

Q. Just a moment, when you got to the car where was he then? When you heard him call, where was he then?

(Testimony of Thomas A. Callan.)

A. He was lying down.

Q. Where was that with reference to his car?

A. His car was on the main road and we were off just a little.

Q. Which way was the car headed at that time?

A. Toward Orient.

Q. And you saw him where?

A. He was lying down beside the car.

Q. Then what did you do?

A. We helped him in the car and one of the boys drove the car up to the tent and then we unloaded him, helped him get out.

Q. Tell us something about his physical appearance at that time.

A. Well, he was sick——

Mr. Mack: I move to strike.

The Court: Motion denied.

Q. All right. He was sick, you say.

A. Yes, sir.

Q. How was he sick? [91]

Mr. Mack: I object to that as calling for an opinion of this witness.

The Court: Anybody knows whether a person is sick or not. You don't have to be a doctor, the objection is overruled.

Q. What was he doing?

A. He was trying to throw up.

Q. I see. Then what did you do with him?

A. Well, we fixed him a bed and helped him to lie down. We told him if he needed anything—if he needed any help, we would help him.

(Testimony of Thomas A. Callan.)

Q. Did you help him retire that night?

A. Yes, we did.

Q. On a cot, or where? A. On a cot.

Q. What time do you think you, personally, retired that night, what time did you go to sleep?

A. About 10:30.

Q. Had this man been talking to you up until that time? A. Yes, most all the time.

Q. What was his physical condition or his appearance after he went to bed there?

A. He seemed to be sick. He thought he might be better, but he was still sick.

Q. The next morning, what did you find?

A. Well, he was dead.

Q. Did you see him dead, there? [92]

A. Yes, sir.

Q. Was there a man by the name of Abraham at the camp at that time?

A. Yes, sir, there was.

Q. Did you personally see young Heatfield?

A. I just met him is all, on the road, we passed each other.

Q. You didn't talk with him?

A. No, I didn't know him.

Q. Was Abraham at the camp at the time you passed this Mr. Heatfield on the road?

A. Yes, he was taking care of the camp.

Mr. Morey: That is all.

Cross Examination

By Mr. Mack:

Q. This gentleman drove up about what time, would you say?

(Testimony of Thomas A. Callan.)

A. About 6:30 in the evening.

Q. Did you look at your watch at all to check up on the time?

A. No, I didn't, but we just got through eating supper.

Q. You had just finished supper?

A. Yes.

Q. Do you know what time you started?

A. We generally started about 6:00 o'clock.

Q. Did you give him something to eat?

A. No. [93]

Q. When he came up to your camp was he walking? A. Yes, he was.

Q. How far was the camp from the road?

A. It must have been about a hundred yards.

Q. Did you see him walking to the camp?

A. Yes.

Q. You saw him walking before he reached the camp. A. He walked from the car.

Q. Did you observe him walking as he came?

A. I didn't see him until he got right close to camp.

Q. You saw him walking after that?

A. Yes, I saw him walk down to his car, or that way, started toward his car.

Q. How long was it after he had come to the camp approximately?

A. When he went to the car?

Q. Yes.

A. He didn't stay very long at the camp.

(Testimony of Thomas A. Callan.)

Q. You say he didn't stay very long, will you try to fix the time, please sir?

A. Well, I would say ten minutes, or fifteen, somewhere around there.

Q. You saw him leave your camp from the highway? A. Yes, sir.

Q. Just how did he walk, please?

A. Well, he was stooped over like he was sick.

Q. His head was bent, you mean—back was bent?

A. Yes, just stooped over like a sick person.

[94]

Q. Did you hear him make any noise or remarks from the time he left the camp until he went to the highway?

A. Other than he was sick, he said.

Q. As he went from your camp to the highway, did you hear him say anything after he left your camp for the highway?

A. Between the highway and the car?

Q. Between the camp and the car. After he came there and got a drink of water, you gave him a drink of water you say. A. Yes.

Q. Then he left in about ten minutes.

A. Yes.

Q. And he went from the camp back to the highway? A. Yes.

Q. Now as he went from the camp back to the highway, did you hear him say anything, did he say anything to you at all?

(Testimony of Thomas A. Callan.)

A. Yes, he said he was sick, then he started out.

Q. Between the camp and the highway, you didn't hear him say anything?

A. No—he had started to walk as he said this.

Q. How long was it after he left the camp that you heard the call?

A. Well, I would say probably half an hour.

Q. When you got up there after that, you saw him lying somewhere on the ground, or something.

A. Yes, sir. [95]

Q. He wasn't in his car?

A. No, he was on the ground.

Q. Was the car on the main highway?

A. No, just off on the curve a little bit, kind of a little side road is what it was there.

Q. Then he was lying how close to the car?

A. Must have been twelve feet or so.

Q. To the front of the car or the back?

A. No, to the side of it.

Q. What was he lying on?

A. He was lying on the ground. He had a small pillow or something there.

Q. That was under his head was it?

A. Yes, it was.

Q. What kind of a noise did you hear? this hundred yards away?

A. Well, we heard him because we were listening.

Q. What did you hear?

(Testimony of Thomas A. Callan.)

A. He just hollered like a person that wanted help.

Q. You don't recall what he hollered?

A. No, no word or anything, he just hollered.

Q. Once, or twice, or don't you know?

A. Just once.

Q. As I understand you you listened for half an hour to hear?

A. I didn't take out my watch, it was near that sometime—we were up there where we could see down.

Q. Were you outside the camp or inside the camp? [96] A. We were out in front of it.

Q. All this half hour?

A. Well, we were going back and forth, some of us were out all the time.

Q. You didn't know at the expiration of the half hour, or when he hollered, you didn't know but what he had gone on?

A. We knew he hadn't gone, the car was there. We could see the top of the car.

Q. Then you brought him back to the camp—drove him back to the camp. A. Yes, sir.

Q. Just how was that done?—Did you back the car up? A. Yes.

Q. How did you put him in the car?

A. We just took hold of him and helped him in the car.

Q. Did he sit in the front or back seat?

A. There was just one seat.

The Court: It was a coupe.

(Testimony of Thomas A. Callan.)

Witness: A coupe, yes.

Q. Do you remember who drove that coupe?

A. I don't know right now, but I think it was Jack Price that did.

Q. When you got to the camp just what did you do?

A. Well, we helped him out and he tried to throw up.

Q. Did he vomit?

A. He was trying to vomit.

Q. Did he or not? [97]

A. Very little, if any.

Q. How long before you put him to bed?

A. Well, we put him to bed as soon as he got done vomiting.

Q. Which would be very shortly after you got him back to camp? A. Yes.

Q. Did you have to undress him?

A. Well we took off his shoes.

Q. He undressed himself the rest of the way?

A. No, he didn't—he just kept his clothes on.

Q. All of them? A. All but his coat.

Q. Who took that coat?

A. He had it off already.

Q. Did you have to make up this cot?

A. We just had to get a clean blanket and everything.

Q. How far did you go to get those?

A. Just a little ways to the cookhouse.

Q. What did you do about helping him on the cot, if anything?

(Testimony of Thomas A. Callan.)

A. Just took hold of him and helped him on the cot.

Q. All three of you?

A. No, I don't remember which one of us did, but we helped him on the cot.

Q. Did he ask for anything else besides water?

A. No, that was all he wanted just water.

Q. Are you certain of that? [98]

A. He asked if we had a stimulant of some kind, but we didn't.

Q. He asked for a stimulant?

A. Ammonia, or something so he could smell it.

Q. What did he say about whiskey, anything at all?

A. He said he wasn't a drinking man.

Q. Did he ask for whiskey?

A. I don't believe he did.

The Court: Is there any evidence to be submitted by either side—is there any whiskey involved?

Mr. Mack: No, no.

Q. During the time he was on the cot, after he lie down in the situation he was, you talked to him? A. Yes I talked to him.

Q. Most of the time until you went to sleep, 10:30 or 10:00 o'clock. A. Yes.

Q. He carried on a conversation with you?

A. Well if I would ask him a question, he would answer me, that is about all.

Q. Did he tell you what his business was?

(Testimony of Thomas A. Callan.)

A. Yes, I believe he did. I am not so sure. I think he did though.

Q. What business did he say he was in if you recall?

A. No, I don't really recall that part. I wasn't interested in his business so much right at that time.

Q. Did he do any voluntary talking? [99]

A. Not very much.

Q. The other boys were also there.

A. Yes, they were there.

Q. Did they talk to him too?

A. No not very much; they might have said a word; I don't remember as to that.

Q. Was he asleep when you went to sleep, if you know? A. Well I thought he was.

Q. Did you hear any noise or anything that night that woke you up? A. No.

Q. Everything was very quiet from the time you went to bed and the last remark he made to you, you thought he was asleep until the next morning.

A. That's about the way it was all right.

Q. You told him if he needed any help to call you, or something? A. That's right.

Q. He didn't do it?

A. No he didn't say anything.

Q. You think that you finished the conversation with him between 10:00 and 10:30?

A. About that time.

Q. And you told him that after you finished the conversation with him?

(Testimony of Thomas A. Callan.)

A. I told him that two or three times.

Q. What did he reply? Did he need any help?

A. He said he had never been sick and he thought he [100] would be all right.

Q. You didn't wake up yourself during the night? A. No I did not.

Q. What time did you wake up the next morning?

A. Well, it must have been a quarter to seven, I judge. It never looked at my watch.

Q. How far was his cot from where you were sleeping, about how far?

A. Oh it must have been twenty feet or so. Twenty-two maybe. In a big tent.

Q. Approximately the same distance from the other boys? A. Yes just about.

Q. You were all in the same tent. A. Yes.

Mr. Mack: That is all.

Re-Direct Examination

By Mr. Morey:

Q. Did this man say anything to you about any work he had done down on the road?

Mr. Mack: I object to that as incompetent, irrelevant and immaterial, self-serving declarations, hearsay—not having been established as part of the *res gestae* and not a statement of fact.

Mr. Morey: Counsel on Cross Examination asked this witness what was said, in other words he invited it, and I believe under the rules I am entitled to follow that up and find out what was said. [101]

(Testimony of Thomas A. Callan.)

The Court: I think you are entitled to ask him as part of the *res gestae* any part of the conversation which might refer to his physical condition or any *exclamation* he might make as to the reason for his physical condition. I will put the same limitation on this witness as I did on Mrs. Harrington yesterday. The objection is overruled.

(Question Read.) 'Did this man say anything to you about any work he had done down on the road?'

A. Yes he said he had over-exerted himself.

Mr. Mack: I move to strike that as a conclusion of Mr. Heatfield and not as a statement of fact.

The Court: Motion denied.

Mr. Morey: That is all.

Mr. Mack: That is all.

Witness Excused.

Mr. Morey: May it please the Court, I would like to pursue this Deposition at this time, if I may. I have a doctor coming who promised to be here at 10:30—

The Court: You had better do a little arguing first. I don't think you have furnished anything further—

Mr. Morey: I understood the Court to say yesterday there were some parts of this Deposition that might be admitted, that was my understanding.

The Court: Yes, there are a few questions in there. I sustained an objection on the [102]

ground there was no identification by this witness as to the place which he testified as being the place about which the Harringtons testified. He said it was about eleven miles away from Curlew—now if you want to go through this Deposition—

Mr. Morey: I hardly see the necessity of that, just so I understand the Court and I don't want to impose on the Court. Now I understand the Court's ruling to be there is no evidence to show that this witness had any knowledge of where this accident happened.

The Court: Yes. The objection was made by Mr. Mack on the ground it was too remote as to time. I am satisfied on that question that that is a question to go to the weight of the testimony rather than its admissibility, as to time. Now as to the identification as to the place—here you have a rather indefinite testimony as to the place—about eleven miles—the young Mr. Heatfield who went up there a few days after that and he testified he went up to the camp and somebody sent him out and he saw a certain place on the road and attempts to testify as to marks there. I don't think it's sufficiently identifies the place, Mr. Heatfield said he saw as being the place. That's the trend of my ruling—not remoteness as to time but indefiniteness as to location.

Mr. Morey: I now respectfully ask to call the Court's attention—the Court may have overlooked it—but you will observe this witness testified as he went along there about eleven miles out of Curlew, he [103] *he* watched particularly to see whether

he could see any signs of a car going off the road. He got up there, and except for some inquiries he made from this man Abraham, he didn't know the exact point—I do think we are in a difficult position there and I do think the Court ought to give all the weight possible to what he said as to the manner of locating it. I wish to say further, if the Court thinks it would be material, that this witness later on in this Deposition has identified—and it's attached to the Deposition a picture which is a similar picture to the one Mr. Harrington took.

The Court: Well, let's see that—

Mr. Mack: Mr. Harrington was asked if that was the approximate representation of the place or the road—

The Court: I will overrule the objection. This exhibit C is the same picture that was identified by Mr. Harrington.

Mr. Mack: Might I make this further observation? I took this exhibit and asked this man—

The Court: Remember it goes to the weight of it. The Jury will have to pass on the weight of the testimony. I will overrule the objection.

Mr. Morey: Then I will continue the reading of the

DEPOSITION OF TOM HEATFIELD

‘Q. And did you have an opportunity to observe a place along the road at about that spot where there were [104] automobile tracks which went off the road. A. Yes.

(Deposition of Tom Heatfield.)

Q. You examined that place, did you not?

A. Very carefully.

Q. You knew, did you not, that that was where your Father had gone off the road? A. Yes.

Mr. Mack: I object to that is simply the view of this witness and not a statement of fact.

The Court: Objection sustained. Let the record show the Defendant objects to all of this testimony by Mr. Heatfield. This question you should specifically object to. But your general objection will go to all of this testimony and is admitted over your objection.

Q. Will you tell us just briefly, Mr. Heatfield, what you saw at that place.

A. There were very distinct marks there at that time where a car had been in the ditch. There were deep tire marks where the car had regained the road, the marks being alongside the shoulder of the road.

Q. Which side of the road with reference to compass directions were these marks?

The Court: I think I will instruct the Jury to disregard that last part insofar as the witness said 'Where the car had regained the road'. That is purely a conclusion of the witness and not admissible. The witness is entitled to testify to what he saw. Of course in my [105] instructions I will instruct the Jury as to the care it must use in appraising and analyzing this testimony. I might as well do it now.

In a case where the situation necessarily makes

(Deposition of Tom Heatfield.)

difficult the presentation of proof, the strict rules of evidence are relaxed to the extent it is proper to submit to the Jury testimony. The Jury must realize that this testimony is submitted as a part of a chain of circumstances in order to prove an ultimate fact and the Jury must appraise this testimony carefully. The weight of it is for the Jury to determine. You understand it is being admitted because the Harringtons said they came along and said they saw this car and saw a man there. This testimony is the young man came up there several days later—he went out to see a place about eleven miles out—there is no testimony this is precisely or exactly the place. Whether or not it will be accepted by you as being the place is a matter you will have to carefully weigh in determining the weight you give this particular testimony.

You may proceed.

A. They were generally on the south side of the road—the road running from west to east.

Mr. Mack: Did you observe which side of the road? A. Southwest probably.

Mr. Mack: From west to east?

A. The road from Curlew to Orient runs west to east. [106]

Q. (By Mr. Sugarman) Did you see any marks of digging?

Mr. Mack: I definitely object to that as incompetent, irrelevant and immaterial.

The Court: I sustain the objection.

Mr. Morey: It occurs to me the digging was definitely—

(Deposition of Tom Heatfield.)

The Court: I sustained it in view of the answer given here. The question and answer are stricken.

Q. Now did you observe anything in the vicinity of these tracks?

A. A log had been placed in such a position as to form a track back to the shoulder of the road from the ditch.

The log was backed up by rocks and had been used as a bulkhead—bulwark perhaps is a better word—against which to bank this dirt.

Q. Mr. Heatfield, did you see any tracks which would indicate how the car had gotten back on the road?

A. Yes, I did. The tracks were very definite and they were deeply imbedded in the loosely shoveled earth.

Mr. Morey: May I suspend this for just a moment? I see my doctor witness has come in. [107]

DR. W. N. MYHRE:

A witness called for and on behalf of the Plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Morey:

Q. State your name please.

A. William N. Myhre.

Q. What is your profession?

A. Physician.

(Testimony of Dr. W. N. Myhre.)

Q. Where do you practice?

A. In Spokane—Paulsen Building.

Q. With whom are you associated?

A. Dr. John Byrd.

Q. Where did you get your education—medical education? A. St. Louis University.

Mr. Mack: We admit the doctor's qualifications.

Q. Dr. Myhre, you have been specializing, have you? A. Yes, I have.

Q. In what branch of your profession?

A. Internal medicine.

Q. Does that include heart diseases?

A. It does.

Q. How long have you been practicing in this locality? A. I was licensed in 1933. [108]

Q. You have been practicing here continuously since that time? A. No I have not.

Q. Did you know Augustus S. Heatfield?

A. I did.

Q. Do you know the last time you saw Mr. Heatfield? A. Yes I do.

Q. When was it?

A. It was about September, 1939—that date may be wrong—I think that is the correct date.

Q. Did I get the right year?

A. It may have been 1940—I don't recall exactly. It may be either 1939 or 1940.

Q. Where did he call on you at your office?

A. Yes, he did.

Q. What was the purpose of that call?

A. He had been having pains in his arms and shoulders.

(Testimony of Dr. W. N. Myhre.)

Q. Did you examine him? A. I did.

Q. Did you make a general examination at that time? A. No, only a superficial.

Q. Was there any complaint made to you at that time of any heart trouble?

A. None at all.

Q. What diagnosis did you arrive at so far as his arm condition was concerned

A. I felt it was sub deltoid persitis. [109]

Q. What was his nervous condition?

A. Good.

Q. Dr. Myhre did you attend the autopsy on the body of Mr. Heatfield? A. I did.

Q. That was here in Spokane? A. Yes.

Q. Who was the Pathologist?

A. Dr. Snyder.

The Court: When was that, do you recall?

A. I don't remember exactly the date, it was during the summer of last year.

Q. You say Dr. Snyder was there?

A. Yes.

Q. Who else was there?

A. Dr. Cunningham, James C. was there—I believe Dr. Lewis was there, Dr. Dave Lewis.

Q. (By Mr. Morey) Do you remember if Dr. Peter Reid was there? A. I believe he was.

Q. (By the Court) Was anyone else there?

A. Two other men, I don't know who they were.

Q. (By Mr. Morey) I was there, was I not?

A. Yes, Mr. Morey was there.

(Testimony of Dr. W. N. Myhre.)

Q. That post mortem was had in a very careful manner was it not, Doctor?

A. Yes, it was. [110]

Q. And took about how long to make the post?

A. Between one and two hours, I believe. I don't recall exactly.

Mr. Morey: I think I may be permitted to preface my question by making a statement. We were not able to get Dr. Snyder down here. I intended to have him testify before Dr. Myhre, but I couldn't get him this morning.

Q. Was there anything, Dr. Myhre, in that post mortem examination which in any way by itself indicated what had caused Mr. Heatfield to die?

A. Yes, I think there was.

Q. What would you say that was?

A. There was evidence of coronary arteriosclerosis.

Q. All right. Just explain those two words. Coronary means what?

A. It's the name of the vessel which supplies the heart with blood. There are three of them—two main branches.

Q. What do you mean by arterio-sclerosis?

A. It's a process which thickens, hardens or changes the walls of the blood vessels.

Q. Otherwise called hardening of the arteries.

A. That's right.

Q. Did you find this condition of arterio-sclerosis in Mr. Heatfield in such a pronounced state that of and by itself without anything on the outside

(Testimony of Dr. W. N. Myhre.)

would cause his death? A. I do not believe so.

Q. Would you say that the arterio-sclerosis that you [111] found in Mr. Heatfield was unusual for a man of his years?

A. I do not believe it was.

Q. Do you know how old he was?

A. Somewhere around sixty-five, I believe, I am not certain about that age.

Q. What life expectancy does a man have at that age?

A. I don't know what the life expectancy is.

Q. Did you find so far as this arterio-sclerosis was concerned Mr. Heatfield had about the same life expectancy that any normal man would have of those years?

Mr. Mack: That is objected to as incompetent, irrelevant and immaterial and not within the issues.

The Court: It isn't the ordinary case of life expectancy as we find it. I think I will sustain the objection and let you restate your question in another way.

Q. I think you have answered this, Doctor, but how long do you think Mr. Heatfield in the condition you found him, unless something unusual, out of the ordinary, would have lived?

Mr. Mack: I object to that as incompetent, irrelevant and not based on any facts. It's purely speculative.

The Court: The objectionable part of your question is the 'how long' part.

(Testimony of Dr. W. N. Myhre.)

Mr. Morey: I will pursue the question along another line.

Q. Dr. Myhre, I will ask you this question, assuming the evidence in this case shows a man sixty-five years of [112] age whose work was office duties and traveling, who was not accustomed to hard work, hard manual labor, and did not engage in any hard manual labor, and who, prior to June 30th, 1942, was apparently in good health; who did not know he had any heart trouble of any kind, and who, on that day of June 30th was seen by his wife and a friend in his usual state of health, the friend seeing him about three on that afternoon, and who according to the evidence now in this case was discovered about six o'clock in the afternoon in a car off the road in the dirt, and in a tight spot in the dirt so it could not be moved without being towed, and who was observed by two witnesses at that time to be greatly exhausted, one of those witnesses having observed that some dirt had been shoveled alongside this car, and this party having stated to one of these witnesses that he had been there for two hours and had gotten so tired he had to lie down, and another statement made by him at that time was that for the first time in his life he had any pains about the heart, and assuming there was another witness who saw him about within half an hour after this other witness had seen him, to whom this party said he had overexerted himself, and when the second party saw him the man was definitely sick, retching

(Testimony of Dr. W. N. Myhre.)

and vomiting, trying to vomit, and further assuming that man was in a stooped over position, when this second witness saw him, and that when the first witness up at the car saw him he was holding his hands in front of his abdomen, then supposing he was put to bed at this camp where this second or third witness was talking to him and during the night he passed away,—do you have any opinion, [113] Doctor, as to what caused this man's death?

Mr. Mack: I object to that as incompetent, irrelevant and immaterial, not a statement of the facts in the case, no showing of anything whatsoever as to the facts with reference sufficiently for anyone to base an opinion on, the evidence being very definitely—

The Court: Just state your objection.

Mr. Mack: Incompetent, irrelevant and immaterial, no proper foundation having been laid and as a hypothetical question does not conform to the facts in the case; assumes facts not proven and the facts alone would be insufficient on which to base any hypothetical question.

The Court: To what extent do you contend the question assumes facts not in evidence?

Mr. Mack: The facts I have very definite reference to obviously is the fact he said he was exhausted. There is no testimony establishing that situation. That is a fact that is a conclusion, and the definite fact that he very definitely tried to, and did, vomit, is not in accordance with the facts;

(Testimony of Dr. W. N. Myhre.)

there is no testimony whatsoever that this man had been doing any shoveling whatsoever, either. The witness merely said there was some dirt on the front end of the wheels, the left front wheel, and there is no showing as to the extent of the man's work, and assuming those facts which do not coincide with the evidence.

The Court: So far as the question refers to testimony by Mrs. Heatfield, you have not yet put in her testimony, and ordinarily I wouldn't permit the question [114] to be asked, but knowing the triple duties doctors have these days, I let that go with the understanding you will supply that, if you don't supply that, the whole hypothetical question and answer go out. As to the objection, he didn't say he was exhausted—there is testimony as to the use of that word. The testimony of Mrs. Harrington was he was hot and tired and all in, that will have to be sufficient for the word "exhausted". The testimony of Mr. Callan was he tried to vomit but did not succeed in vomiting. There is evidence—can you amend your question in those particulars?

Mr. Morey: I would like to add—

The Court: (To the witness) Do you understand the changes I have made?

Witness: Yes.

Mr. Morey: I don't know whether I included this statement that this party we have been talking about is the Mr. Heatfield whose body he examined.

(Testimony of Dr. W. N. Myhre.)

Mr. Mack: That wouldn't make any difference.

Mr. Morey: Except it would show the condition of arterio-sclerosis.

The Court: You may add that into the question. I will overrule the objection with the understanding it is later to be connected up with Mrs. Heatfield's testimony. (To the Doctor) The question now is do you have any opinion, you understand that? A. Yes.

Q. Now, please state what your opinion is as to what [115] caused his death.

Mr. Mack: To which we object.

The Court: Objection overruled.

A. You want a technical opinion, with a medical terminology?

Q. I suggest first you use the medical or technical term, and then explain that to us.

A. I believe that Mr. Heatfield died of mio-cardio insufficiency due to coronary stenosis.

Q. Now tell us what you mean by the word mio cardio. A. That's the heart muscle.

Q. The heart muscle is called—

A. Mio-cardium.

Q. When you use the word insufficiency you mean just what the layman would mean.

A. Exactly.

Q. Now tell us, if you will, a little more about what you mean by mio-cardial insufficiency.

A. The coronary blood vessel supplies the heart muscle with nourishment or blood without which the heart muscle is insufficient. Stenosis of the

(Testimony of Dr. W. N. Myhre.)

coronary vessel is the narrowing of the lumina in the vessel making the amount of blood passing through it much less than the coronary vessel would carry, consequently the muscle cannot function normally in the absence of this blood.

Q. This sclerosis is also a hardening of the [116] vessel.

A. You might liken it to a thickening or deposit on the inside of a pipe. You might liken it to your gasoline, a thickening or deposit on the inside of your gas line—it will carry you along on the level beautifully, but if you attempt it on a hill where the car requires a large amount of gas the car will do the same thing that Mr. Heatfield's heart did—it will stop.

Q. What is vital to the muscle?

A. Blood.

Q. What is included in the blood?

A. The most important thing is oxygen.

Q. The mio-cardium has to get some oxygen in order to work. A. That's right.

Q. In other words, a man in his condition when an unusual strain is placed on that heart it calls for more oxygen and doesn't get it, is that right?

Mr. Mack: I object to that as incompetent, irrelevant and immaterial.

The Court: Q. What is the difference between stenosis and occlusion?

A. An occlusion is a complete obstruction of the vessel, cuts off all the blood.

(Testimony of Dr. W. N. Myhre.)

Q. I believe you testified a while ago that Mr. Heatfield's coronary arterio-sclerosis of and by itself was not sufficient to have brought about this fatal condition without some exertion. [117]

A. Between 10% and 15% of all coronary deaths are due to coronary stenosis rather than coronary occlusion.

Q. I want to ask you this question please—when this coronary vessel that Mr. Heatfield had in his heart gets in the condition you found it in at the time of this post mortem, in any man whether it's Tom, Dick, or Harry, does it throw out a red lantern signal of danger to the man and tell him to look out there is danger ahead?

A. Yes, it can.

Q. Does it ordinarily?

A. If he exerts himself.

Q. If a man is leading a sedentary life and not exerting himself, he goes along without any pain—is that right? A. Ordinarily, yes.

Q. In other words, the thing that brings on this stenosis is over exertion.

Mr. Mack: I object to that as calling for a conclusion.

Mr. Morey: He is an expert.

The Court: The objection is overruled.

A. Exertion will not bring on coronary stenosis.

Q. I want you to explain to me—you used the words coronary stenosis. A. Yes, -sir.

Q. How did you use that in connection with this mio-cardial insufficiency?

(Testimony of Dr. W. N. Myhre.)

A. Coronary stenosis is what you might term the [118] normal ageing process in the walls of any vessel—it's the normal ageing process of all body blood vessels—it occurs earlier in some people than in others. Coronary stenosis as I used it in Mr. Heatfield's case was the narrowing of all blood vessels or, in particular, narrowing to such an extent it was practically incapable of furnishing the nourishment to this heart muscle.

The Court: Q. You say stenosis is not brought on by exertion—what about the insufficiency?

A. The insufficiency is brought on by a demand which is greater than the nourishment from the stenotic vessel, or that the vessel will supply. The muscle then becomes insufficient just like a gasoline motor will become insufficient when it is not supplied with enough gasoline to carry it up the hill, insufficient for the task placed upon it.

Mr. Morey: You may cross-examine.

Cross Examination

By Mr. Mack:

Q. Stenosis, as I understand it then, is the thing itself which causes the blood to flow less freely through the artery. A. That is correct.

Q. That is not brought on by exertion.

A. It is not.

Q. That can happen at any place at any time, day or night, in the man who has this sclerosis, or any minute.

A. Stenosis does not happen in a minute. [119]

(Testimony of Dr. W. N. Myhre.)

Q. It can happen—I don't mean it kills in a minute.

A. It couldn't happen—no—it's a process of years, many years.

Q. What is stenosis?

A. It means the narrowing due to sclerosis which is the thickening—the sclerosis causes the stenosis.

Q. If a man has the condition—well, such as Mr. Heatfield had—you say of sclerosis, he has a bad case of stenosis, is that true? Or there is danger of stenosis.

A. All arteries are stenotic in proportion to the degree of sclerosis, no matter which part of the body they are in.

Q. Sclerosis is an accumulation of time, is that fair enough?

A. Yes, it is an accumulation of time.

Q. And in Mr. Heatfield's instance, you say he was approximately sixty-five—it was to be expected what was found there.

A. Yes, it's not out of the ordinary.

Q. And whether the man exercises or not, under that condition stenosis would occur.

A. Stenosis doesn't occur suddenly—it's always there—it's there over the same period of time sclerosis is there.

Q. The stenosis then, apparently, is merely the fact the sclerosis narrows the artery.

A. Stenosis is the same thing that happens in

(Testimony of Dr. W. N. Myhre.)

[120] hot water pipes—there is a lime deposit—it doesn't occur suddenly.

Q. When stenosis becomes complete—

A. Then we have coronary occlusion.

Q. Which is the stoppage of all blood.

A. That's right.

Q. Doctor, what eventually causes complete stenosis?

A. The process will eventually close the vessels, or the fragments of a vessel may break off and obstruct a portion in its continuity.

Q. Is there anything else will bring about closing the vessel?

A. Embolism. foreign matter blocking it.

Q. Anything else? How about bacteria?

A. Bacteria would be foreign matter—or a portion of the vessel wall itself, any stenotic process will gradually occlude it—that's all that can occur.

Q. Is there any way for a man to bring on coronary occlusion from a blood clot by himself?

A. You are limiting that to a blood clot?

Q. Or foreign substance.

A. Foreign substance might be a portion of the vessel wall. I don't know how you limit me in the answer of it. By foreign substance I meant bacteria particularly. You couldn't bring bacteria into the blood stream unless by injection and they wouldn't get into the coronary vessels. [121] If he wanted to do it himself, he could stick a needle in and inject them.

Q. So coronary occlusion by bacteria, foreign

(Testimony of Dr. W. N. Myhre.)

substance, has nothing in the world to do with it, unless he injects it.

A. An occlusion can occur if a portion of the vessel wall obstructs the vessel.

Q. Well, let me clear the atmosphere if I can. Could the same thing—I think this is a fair question—that you found in Mr. Heatfield have occurred at any time?

A. Mr. Heatfield's coronary vessels were patent—they were open—they were not occluding, they were narrowed. The condition we found in Mr. Heatfield showed no cause of death, except this narrowing of the artery which narrowing would cause death only if the heart needed more blood from that vessel than the vessel could supply. The heart demanded it, apparently his blood vessels couldn't supply it, consequently the blood vessels stopped.

Q. The demand from the heart for more blood is a pretty immediate process.

A. Yes, it is on exertion.

Q. Now, if the exertion brings on this instant demand on the heart for more blood when a man has the condition Mr. Heatfield had, by his exertion he would die pretty rapidly, wouldn't he?

A. It may occur in the matter of many hours after complete obstruction in the vessel, which Mr. Heatfield didn't have. [122]

Q. He did not have any complete obstruction of the vessel? A. He did not.

Q. I understood you to say this was pretty

(Testimony of Dr. W. N. Myhre.)

rapid death—I thought I understood you to say that.

The Court: No, he didn't say that.

A. I didn't say that.

Q. Now exercise would demand more blood.

A. Yes, exercise demands more blood.

Q. The amount of exercise would depend, would it, upon how much more blood the heart might demand?

A. The amount of exercise which he is capable of performing would depend on the amount of blood this coronary vessel would supply the heart.

Q. The amount of exercise he does would depend on the amount of blood the heart would demand—was demanding—I thought I made myself clear. A. I don't understand you.

Q. Take a man sixty-five years of age in the condition you found Mr. Heatfield in, would it make any difference if he walked a couple of blocks or whether he shoveled a ton of dirt in the amount that the heart would demand?

A. Yes, indeed it would.

Q. So that's what I am saying, the amount of exercise he performed, the heart demands more blood.

A. The heart demands blood in proportion to the amount of exercise the individual undergoes.

Q. And in proportion to the amount of work he [123] does, and if he has done an insignificant amount of work, very likely it wouldn't affect the heart at all. A. In all probability.

(Testimony of Dr. W. N. Myhre.)

Q. In this thing you are calling—whatever it is I can't pronounce it—what is the pain that goes with it? A. Sometimes there is pain.

Q. Is there ever an exceedingly hard pain?

A. Very often, sir.

Q. And the patient unquestionably knows they are in terrific pain. A. Indeed.

Q. Do I understand you to say that sometimes you have this thing and there isn't any pain?

A. Quite frequently.

Q. And he doesn't know anything about it?

A. Yes, indeed—it is not pain, however.

Q. How does he know about it?

A. He will have a feeling of oppression, shortness of breath, extreme exhaustion, nausea, vomiting, coughing.

Q. Invariably vomiting? A. Not always.

Q. What do you mean by not always?

A. He doesn't invariably vomit.

Q. But that is one of the symptoms?

A. Yes, sir, sometimes.

Q. And exhaustion is another. A. Yes.

Q. Shortness of breath another. [124]

A. Yes.

Q. And would the shortness of breath be quite noticeable? A. Usually.

Q. Isn't it always apparent? A. No, sir.

Q. Any one of those causes can be eliminated and still he may have this stenosis?

A. Yes, sir, any one of the effects.

Q. That's what I meant, the symptoms.

(Testimony of Dr. W. N. Myhre.)

A. Yes, any one of the symptoms may be eliminated, or all.

Q. Then he wouldn't know it at all.

A. Yes.

Q. Then what does he do?

A. Sometimes they die and not know it.

Q. When is that when they die and don't know it—any time of day or night?

A. It may be any time depending on what the occurrence is that caused it.

Q. Supposing you don't know how much work and labor the man had done, could you say whether or not he over-exercised, over-exerted himself—is it possible to tell from that?

A. To tell he had over-exerted from what we found in the dead body?

Q. Yes.

A. I would say it would be very difficult to tell [125] what caused the thing by looking at the autopsy.

Q. Then the answer would be, no, you couldn't tell. A. That's right.

Q. And you would have to depend, in this particular case, upon the testimony outside of the autopsy to make your conclusion that you have just made for us. A. Not necessarily.

Q. But in this particular autopsy, did you have to?

A. In this particular autopsy there was evidence the heart muscle would not withstand any exertion, that is, any demand on it, and the autopsy in this particular individual showed in-

(Testimony of Dr. W. N. Myhre.)

complete ruptures of the aorta in its arches which are most frequently associated with exertion in the majority of instances.

Q. And they may cover quite a considerable period of time.

A. Here we have a man who is dead, he has coronary arterio-sclerosis to a degree the arteries are insufficient to supply the heart muscle with much blood and we have, also, in the arch of the aorta incomplete rupture which rupture is most frequently following heavy exertion.

Q. Incomplete hemorrhage?

A. Incomplete rupture of the wall of the aorta, most frequent cause for this is extreme exercise.

Q. What do you mean by incomplete?

A. I mean a break in the continuity of the blood vessel wall which does not extend through the wall—those [126] were present.

Q. Where is this aorta?

A. They were in the portion of the great vessel which leads the blood out of the heart.

Q. It has to get in there before it goes out.

A. That is an entirely different blood system. The blood which supplies the heart is entirely separate from that which leaves the heart.

Q. The aorta is the one that leaves the heart.

A. Yes.

A. And that was found ruptured?

A. Incompletely ruptured.

Q. Which definitely showed then there was plenty of blood in the *art*?

(Testimony of Dr. W. N. Myhre.)

A. It had no relation to it because the heart is always full of blood, the heart chamber. The heart muscle is in a different system separate from the heart chamber. The heart chamber is always full of blood.

Q. If I understood you right, this artery in which this sclerosis was, had diminished by virtue of the sclerosis. A. That's correct.

Q. And that had nothing to do with the aorta as it goes into the heart, is that apart?

A. The coronary vessels have nothing to do with the aorta as it goes into the heart. It's a separate blood system.

Q. Did this coronary sclerosis, did that have [127] anything to do with that man's death?

A. Yes.

Q. And that's the artery leading to the heart?

A. Leading to the heart muscle but not that supplies the heart chambers with blood. The heart chambers get their blood supply from the veins always.

Q. Where was this artery—this coronary artery—I am trying to get some light on this the best I can—it's not outside the heart?

A. It's in the heart muscle.

Q. Where is that muscle?

A. The heart muscle supplies the motive power for the blood stream. It derives its circulation from a system which is outside the blood stream itself, I mean the circulation through the heart—the coronary arteries come from the base of the

(Testimony of Dr. W. N. Myhre.)

aorta just before the aorta begins, just before it leaves the left ventricle.

Q. Supposing a man died of coronary occlusion, wouldn't that be in the vessel or the valve itself?

A. No, the coronary occlusion would be in the little blood vessel that supplies the heart muscle. The aorta supplies the rest of the body.

Q. This trouble was in the aorta?

A. The stenosis was in the coronary artery, incomplete rupture in the wall of the aorta.

Q. And that was due to what?

A. Most incomplete ruptures of the aorta are due to physical exertion or trauma. [128]

Q. Is it always due to physical exertion?

A. Most always.

Q. There are some cases when it is not due—are there some cases where the aorta is not affected by physical exertion?

A. Incomplete rupture of the aorta may occur in heavy sneezing, heavy coughing—but they would have to be in the presence of a damaged aorta an arterio-sclerosed aorta.

G. In your opinion you are assuming that this man did considerable exercising.

A. One would assume so. This man was dead of a stenotic coronary arterio-sclerosis and not an obstruction. If he had incomplete rupture of the arch of the aorta, one would assume there had been physical exercise or trauma of that part of the body.

(Testimony of Dr. W. N. Myhre.)

Q. What is angina pectoris?

A. Angina pectoris itself is not a cause of death. Angina pectoris simply means a strangling of the chest. It is a symptom.

Q. Angina pectoris doesn't cause death. Isn't an angina pectoris the cause of the muscles surrounding the artery cramping or squeezing so that no blood gets into the heart?

A. That is the theory of angina pectoris.

Q. If that theory is correct he died.

A. He died of coronary insufficiency because the heart didn't get enough blood through that blood vessel. [129] It's not listed as cause of death. It's due to narrowing of the blood vessel.

The Court: Q. Does that cause have the same relationship to death as over-exertion does?

A. Angina pectoris is a strangling of the chest. Where we say a patient died of angina pectoris, we find coronary arterio-sclerosis. There is no instance of angina pectoris causing death. Angina pectoris being a symptom cannot cause death, the death is due to arterio-sclerosis with the failure of the coronary vessel.

Q. And that's because it can't get any blood.

A. Only when the vessels are sclerosed or stenotic.

Q. In this instance you tell us this man did have sclerosis. A. That's true.

Q. But it was not angina pectoris, you say.

A. Angina pectoris is a symptom, the strangling in the chest.

(Testimony of Dr. W. N. Myhre.)

Q. Let's assume, Doctor, there has been a cramping of this particular muscle keeping the blood from getting into a man's heart, couldn't that be just as true as the condition in your aorta?

A. Angina pectoris doesn't cause incomplete rupture of the artery, if that is what you mean.

Q. This man could have the strangling of this vessel, this coronary vessel and die, couldn't he? You say because he couldn't get any blood through that thing, that is what you mean? [130]

A. Yes, sir.

Q. And you say he died of coronary—as a matter of fact he didn't get any blood into his heart, that is what you are saying, isn't it?

A. Yes, not getting blood through the heart muscle.

Q. And died of whatever other name you want to call it? A. Mio-cardial insufficiency.

Q. That means simply insufficient lack of blood in the heart.

A. Lack of blood in the heart muscle, not in the heart.

Q. Well, that is in the heart.

A. No, the heart has plenty of blood in it always.

Q. Well, it's just the matter of a name—mio-cardial insufficiency, or angina pectoris, it's simply a matter of a name.

A. No, sir, they are not one and the same thing, if that is what you mean.

Q. If he had a pain, he could have angina pectoris, is that right?

(Testimony of Dr. W. N. Myhre.)

A. If you have a pain, you might have a headache, or a belly ache, or anything.

Q. That's right. An angina pectoris means merely you have a headache or a stomach ache.

A. No, it means I have a strangling in the chest.

Q. Due to what? [131]

A. Due to anything—usually due to lack of oxygen in the heart muscle.

Q. Are you acquainted with Dr. Tice?

A. Yes, I know him.

Q. Personally? A. Yes.

Q. What do you think of his book on angina pectoris?

A. Dr. Tice is not considered a Cardiologist. He is an Internist.

Q. I don't know what that all means. He writes generally, doesn't he? A. Yes, he does.

Q. Standard works?

A. Standard work on medicine.

Q. And diseases of the body? A. Yes.

Q. If Dr. Tice says a man dies of angina pectoris, he might be right?

A. It is not listed as one of the recognized causes of death.

Q. Anyhow, if Dr. Tice says that, I have a right to assume it, haven't I?

A. You have a right to assume it.

Q. You could be wrong, or he could be wrong, is that it? A. That's right.

Q. And angina pectoris, if he says, comes about from exercise, he could be right, could he not? [132]

(Testimony of Dr. W. N. Myhre.)

A. Angina pectoris is produced by exercise, yes.

Q. Then, of course, that means a pain in the chest. A. Yes.

Q. That's all exercise does, so far as angina pectoris is concerned, he has a pain in his chest.

A. That's right.

Q. He wouldn't be apt to have his hand down on his abdomen, would he?

A. Not in angina pectoris.

Q. Does the aorta have any reference to the abdomen? A. There is an abdominal aorta.

Q. Is that the one you are talking about?

A. No.

Q. That is much higher. A. Yes.

Mr. Mack: I believe that is all.

Mr. Morey: That is all.

The Court: May the Doctor be excused?

Mr. Mack: I may want to call him back. I won't do it unless it is absolutely necessary.

The Court: If you have any questions to ask the doctor, ask them now.

Mr. Mack: I really think I have covered the picture. I won't bother him you can depend on that. I don't want to put myself in that position. I think he is safe to go without asking him any more questions.

The Court: If you have any questions [133] ask him now, or not at all because doctors are busy these days. We have about one-third of the doctors we ought to have.

Mr. Mack: That is all, then. The doctor may go.

(Whereupon: The Court recessed for ten minutes, after which time, all parties present, the trial resumed.)

DR. GEORGE A. C. SNYDER,

a witness called for and on behalf of the Plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Morey:

Q. Where do you reside, Doctor?

A. Route 5, Spokane.

Q. What is your profession?

A. Physician.

Q. Where did you get your education?

A. At the University of Oregon, Medical School.

Mr. Mack: We admit the doctor's qualifications.

Q. When did you graduate from college?

A. From Medical School, or College?

Q. Medical School. A. In 1934.

Q. Where was your first location, Doctor?

A. Following internship,—

Q. Where did you interne? A. At Seattle.

[134]

Q. When you left the hospital, where did you go?

A. Arizona.

Q. When did you come to Spokane?

A. In 1939.

Q. Are you following a specialty here?

A. I practice pathology.

(Testimony of Dr. George A. C. Snyder.)

Q. Just tell us if you will, what you mean by pathology.

A. The duty of a Pathologist is chiefly the examination of materials in the laboratory—laboratory diagnosis—examination of tissues removed in the surgery and conducting of post mortem examinations.

Q. Since you have been in Spokane, you have conducted many post mortems, have you not?

A. Yes.

Q. Where is your office?

A. At the Deaconess Hospital.

Q. You are connected with the Deaconess Hospital? A. Yes.

Q. Pathologist for the Deaconess Hospital.

A. That's right.

Q. Doctor, did you conduct an autopsy on the body of Augustus S. Heatfield? A. Yes, I did.

Q. When was that?

A. July 10th, 1942, I believe.

Q. Do you know who was present?

A. Yes, Drs. Joseph B. Finney, David H. Lewis, [135] James H. Cunningham, W. N. Myhre, and Mr. Zappone, I believe.

Q. Was I there? A. Yes, sir.

Q. Doctor, I will ask you what condition did you find this body in?

A. Well, he had been dead for some time and the changes due to—that occur after death, of course.

(Testimony of Dr. George A. C. Snyder.)

Q. I know, but what was there to show if anything, what was wrong with Mr. Heatfield?

A. Well, he had hardening of the arteries which is comparable with a man at his age.

Q. But not of and by itself dangerous.

A. No.

Q. Unless there is something outside that stirs it up. A. That's right.

Q. The lungs, liver, stomach, brain, everything else you found in this man was good?

A. Yes. There were some small changes in the brain. They were not due to hardening of the arteries—that didn't amount to anything. There was an excessive amount of fluid in the lungs which is comparable with heart failure.

Q. These changes in the brain, that was arteriosclerosis?

A. Yes change to due to a hardening of the arteries, very minor, don't amount to anything.

[136]

Q. I will ask you the same question I asked Dr. Myhre or a similar question: When a man has the hardening of the arteries that you observed in Mr. Heatfield, does that condition, hardening of the arteries, set up a red lantern signal and say to this man "look out, danger ahead", or is a man liable to have that condition and go along without knowing anything is wrong?

A. That would depend entirely on what arteries are involved and how deeply involved it is. Many people have this condition and no symptoms at all.

(Testimony of Dr. George A. C. Snyder.)

Q. In that condition that you found Mr. Heatfield in, do you think there was anything in that condition, of and by itself would be a warning to him he had heart trouble? A. Probably not.

Q. Doctor, considering the fact that Mr. Heatfield was sixty-five years of age, that he was an office man, traveling salesman, and that he had this condition you have just described you found in his body, and that he was not accustomed to hard manual labor, and that he did not know he had any heart trouble, and that man, on a date, June 30th, 1942, in the morning and afternoon was the same as he always had been, apparently in good physical condition to all intents and purposes, seemed to feel all right, about 3 o'clock that afternoon he seemed to be in that condition, about 6 o'clock he was found with his car off the road, a mountainous country road, isolated spot, car in such condition it can't be moved without being towed, [137] this Mr. Heatfield was tired and said that he had been working on his car for about two hours, and worked so hard he had to lie down and rest, and had for the first time in his life heart pains about his heart; then, further assuming that that was about 6:15 and about 6:30 other witnesses saw him and he was vomiting, stooped over, and when this first witness saw him he was holding his hand down on the front part of his body, and the second witness with a third witness, helped put him on a bed that night and while he was there he told this witness he had been working hard on his car, overstrained himself,

(Testimony of Dr. George A. C. Snyder.)
over-exerted himself, and he was found dead the next morning—do you have an opinion as to what caused his death, answer that "yes" or "no".

Mr. Mack: I object to that as incompetent, irrelevant and immaterial, assuming facts not proven, not showing that the man was vomiting, no showing he had been working two hours—

Mr. Morey: He said he had been working two hours.

Mr. Mack: No statement he had over-exerted himself, it's not in accordance with the facts so far proven in this case.

The Court: The question makes this assumption, that he had not been accustomed to exerting himself, or heavy exertion, your testimony on that is the testimony of his son to the effect that in his work—if you intend to supply that later, I will permit the question to stand. [138]

Mr. Morey: I intend to supply that later.

The Court: Then I will overrule the objection.

Q. Do you have any opinion as to what caused his death? A. Yes.

Q. Now what, in your opinion, caused his death?

A. In my opinion it was due to physiological disturbances of his heart, functional disturbances in the action of his heart.

Q. What caused that?

A. In the first place, this man had a narrowing of the coronary artery due to a hardening process. In a second place, there was a hemorrhage or bleeding about the upper end of the aorta and

(Testimony of Dr. George A. C. Snyder.) these things, this coronary artery narrowing and the hemorrhages around the upper end of the aorta probably resulted in a spasm of the coronary arteries. In other words, amounting to closing them up so far as supplying the heart muscle and because of that the heart ceased to function normally and the man died.

Q. What started the spasm?

A. It's entirely probable the hemorrhage around the upper end of the aorta did that.

Q. What caused that, did it just happen to him?

A. No, I think not, because there was a break in the intima of the aorta and these breaks are usually due to some sudden strain coming on the vessel. [139]

Q. That's what I want to find out, whether you think the strain had anything to do with it.

A. Yes, I think it did.

Mr. Morey: That is all.

Cross Examination

By Mr. Mack:

Q. Do you recall whether Dr. Boyd was present at the examination?

A. I don't recall offhand, my impression is he was, yes.

Q. Do you think that Dr. Myhre was at that examination? A. Yes.

Q. You made a report, did you not?

A. Yes.

Q. Have you got it with you?

(Testimony of Dr. George A. C. Snyder.)

A. I have a copy of it.

Q. In that report, you stated, did you not, who was present?

A. In my report, Dr. Myhre's name was omitted.

Q. You made that yourself, didn't you?

A. That's right.

Q. How did it come you omitted Dr. Myhre, can you tell us?

A. No, I can't tell you that.

Q. Did you talk to him at that time?

A. I did.

Q. Did he assist you at that time? [140]

A. He was present.

Q. Well he didn't assist you?

A. No, not directly.

Q. Then, as I gather, you say it was just an oversight that his name doesn't appear.

A. Yes, sir.

Q. Was anybody present with you, doctor, at the time you made that report, was any doctor with you at the time you made that report—when you typed the report was anyone there besides yourself—is what I mean—when you made that instrument you have in your hand?

A. Yes, Dr. Finney was there.

Q. In the examination in the autopsy, you observed that the man had hardening of the arteries in the ordinary vernacular. A. Yes, sir.

Q. How severe was that situation as you observed it?

A. Well, I would say it was moderately severe,

(Testimony of Dr. George A. C. Snyder.) but there was some narrowing of the coronary artery, especially of the left coronary artery, and a narrowing of the vessel of the brain.

Q. What was there to show so far as the autopsy was concerned, to show that this man did not die of angina pectoris?

A. Well, engina pectoris is a train of symptoms really. It isn't anything you can put your finger on and put out in your hand. [141]

Q. No—because angina pectoris is where the vessel is prevented from entering the heart by the cramping of some muscle, is that right?

A. It's usually due to a spasm of the artery that supplies the heart muscle.

Q. Can a person die of a spasm of the artery?

A. It could be severe enough to cause death.

Q. Does it ever do it?

A. Occasionally it does.

Q. Then, what do we say he passed away of—he died of—if that spasm is the cause of his death?

A. Usually he dies as a result of some very profound disturbance of the cardial rhythm; often-times the heart goes under a quivering contracting, or titulation as we call it, that depends on the shutting off of the blood supply to the heart, you see.

Q. Now taking it on what you found in your autopsy, what other things could have caused Mr. Heatfield's death besides what you have just related?

A. We could find nothing.

Q. It could not have been caused from any

(Testimony of Dr. George A. C. Snyder.)

other condition excepting the strain, is that what you say? A. Restate the question, please.

Q. It could not have been caused, from what you saw by the autopsy, from any other condition than the strain? A. I think not.

Q. It could not have been caused by what I have been calling angina pectoris? [142]

A. I think not.

Q. It might have been?

A. Oh, it's conceivably possible it could be, but the evidence of hemorrhage and so on, here points very definitely to the condition such as I described.

Q. What causes hemorrhage of the aorta?

A. Well, the hardening in the artery results in degenerative changes in the vessel walls, and that, plus the strain or injury, causes the rupture.

Q. Was there anything else that could cause a hemorrhage of the aorta than a strain or injury?

A. Yes, there have been things.

Q. What are they, please?

A. But there is no evidence any of these things existed here.

Q. What are they that could have caused a hemorrhage of the aorta?

A. Certain diseases of the blood—we see them sometimes in very severe infections, things of that sort.

Q. The distinction between the hemorrhage you found in Mr. Heatfield and the one you found in these other conditions, is there any difference?

A. Yes, in that these other conditions generally

(Testimony of Dr. George A. C. Snyder.)
the hemorrhage multiplies and scatters along the vessel, the ones caused by strain usually localizes in one area.

Q. If a man had a cramping of the muscle sufficient to occlude or keep the blood out of the heart, would that not cause a hemorrhage? [143]

A. No, ordinarily it does not.

Q. It takes a physical strain to cause hemorrhage of the aorta. A. Yes.

Q. A very severe strain?

A. Involving the hardening of the artery it takes a considerable strain. If involved in disease, it takes a lesser strain.

Q. Did you find this one involving any disease, this particular aorta of Mr. Heatfield?

A. No disease other than hardening of the arteries, arterio-sclerosis.

Q. You don't call that a disease of the aorta—that doesn't have anything to do with the aorta?

A. Oh, yes, it does.

Q. In what respect?

A. The aorta is the biggest vessel in the body and that is involved in this hardening like the smaller vessels around it.

Q. This sclerosis merely keeps the blood from going to it?

A. Not necessarily unless the sclerosis is of such type it narrows the vessel wall, that's usually caused in the smaller arteries—

Q. Wouldn't it take a great deal of strain to effect a hemorrhage?

(Testimony of Dr. George A. C. Snyder.)

A. Not in an aorta that is weakened by disease.

Q. Was this weakened by disease and what kind of [144] disease?

A. Arterio-sclerosis, hardening of the arteries.

Q. Was there any hardening in the aorta?

A. Yes, the aorta was involved, yes.

Q. Was there sclerosis in there? A. Yes.

Q. To what extent?

A. I would say moderately severe.

Q. Is that what is called the right or left ventricle?

A. No, the ventricle is a part of the heart.

Q. Will you take that autopsy report in your hand and tell us where you say anything about sclerosis in the aorta?

A. Well, this report is made out in medical, technical terms, and here I have, it says "atherosclerosis of aorta" which is a medical term to use the type of hardening of the artery.

Q. Didn't you think the autopsy showed a rather healthy man?

A. Considering his age, yes.

Q. As a matter of fact, you took the coronary—the heart itself—

A. No, the coronary arteries are the arteries that supply the heart muscle with blood.

Q. Very well, then—you took the coronary artery during the autopsy and very minutely dissected it to determine what condition it was in. [145]

A. That's right.

Q. What were you looking for?

(Testimony of Dr. George A. C. Snyder.)

A. I was looking for clots or any pus in there.

Q. So as to determine if the man had coronary occlusion, wasn't that it, whether he died of that?

A. That's right.

Q. Did you see anything like that?

A. We didn't find any organic occlusion.

Q. Had it been from some outside substance the outside substance would still have showed at the time of the autopsy—the thing that caused the occlusion.

A. You mean if there was a clot in the artery?

Q. Yes. A. Yes, that would be there.

Q. And there was nothing like that?

A. Nothing except clots formed after death.

Q. The only fact then, doctor, as I gathered from your statement, is that because you found a hemorrhage in the aorta, you concluded this man must have been affected by—he must have strained it or over-exerted it, or overworked it, is that correct?

A. That's the assumption, yes.

Q. If you had not found this hemorrhage of the aorta, you wouldn't make the conclusion you do now, is that correct? A. That is correct.

Q. So the fact the aorta did have a hemorrhage it must have had it from a strain or one of the other instances [146] you tell us about? A. Yes.

Mr. Mack: I believe, Doctor, that is all.

Mr. Morey: I am offering in evidence Plaintiff's exhibit F, being the autopsy report.

Mr. Mack: No objection.

The Court: It will be received in evidence.

(Witness excused.)

(Whereupon: Court adjourned to 1:45 P. M., at which time, all parties, present, the trial resumed.)

EDNA L. HEATFIELD,

a witness called for and on behalf of the Plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Morey:

Q. Your name is Edna L. Heatfield?

A. Yes, sir.

Q. You are the Plaintiff in this lawsuit and the widow of Augustus S. Heatfield. A. I am.

Q. How long were you and Mr. Heatfield married? A. A little more than forty years.

Q. Did you live in Spokane a good part of that time?

A. Yes, our residence was there all of that time.

Q. What was Mr. Heatfield's business? [147]

A. He was special agent, or State agent, for Selbach & Deans, General Agents in San Francisco.

Q. And they, in turn, were agents for what company?

A. Hanover Fire Insurance Company.

Q. How long had he held that position?

A. About twenty-six years, maybe a little longer.

Q. What was the nature of his work as such agent?

A. He appointed agents, his title I believe, was State agent—he did the office work in connection

(Testimony of Edna L. Heatfield.)

with the business in Spokane and traveled as much as was necessary to carry on the duties.

Q. He traveled in his car, sometimes by train or bus? A. Yes.

Q. Did his work necessitate hard, manual labor?

A. No, sir.

Q. What was Mr. Heatfield's build?

A. Well, he was about five feet eight inches tall, weighed about, I should say, 150 pounds.

Q. Was he what you would call a husky build?

A. Well, rather muscular.

Q. Did he ever engage in any hard, manual labor? A. Not that I know of.

Q. You knew him pretty well, didn't you?

A. I think I did.

Q. Have you ever, in the last few years, ever seen Mr. Heatfield engage in such hard labor so as a result [148] he was worn out and his shirt ringing wet?

A. I saw his shirt ringing wet, but it was after he was dead.

Q. I mean any other time except that?

A. No, sir.

Q. What were the outward appearances of his physical well-being?

A. Well, he looked unusually young for a man his age.

Q. He appeared to be healthy?

A. Yes, sir.

Q. As far as you know did he have any heart trouble? A. No, sir.

(Testimony of Edna L. Heatfield.)

Q. Do you know the last time he called on any doctor?

A. I would say the last time I knew was the latter part of 1941.

Q. Whom did he call on then?

A. Dr. Myhre.

Q. You are pretty sure that was in 1941?

A. Yes, I am quite sure of it.

Q. What was his nervous temperament?

A. Well, he was very high strung and excitable.

Q. Did you see him on the morning of June 30th, 1942? A. Yes, sir.

Q. Where was he going? [149]

A. He was going to Republic and Colville.

Q. What was the condition of his health that morning when he left home?

A. He was very chipper, just as usual.

Q. When were you advised of his death?

A. At eleven o'clock on July 1st.

Q. The day after he left? A. Yes, sir.

Q. Did you subsequently receive some of his personal effects from the undertaker at Colville?

A. Yes, through Smith & Company.

Q. Some clothing? A. Yes.

Q. Tell the Jury about that shirt you were talking about awhile ago, what was the condition of that shirt, do you know it was his shirt?

A. Yes, I do, it was a white Arrow shirt. The shirt was stained and yellow clear to the shoulder. The collar was wilted and stained clear through with what I took to be perspiration.

(Testimony of Edna L. Heatfield.)

Q. When did you find the Standard Accident policy?

Mr. Mack: I object to that as incompetent, immaterial and irrelevant under the issues in this case.

The Court: I overrule it for the same reason I gave yesterday in ruling on the deposition of the representative who came up here from San Francisco, Mr. Selbach. [150]

A. Mr. Selbach found the policy in my husband's office. It was in August, I don't remember the date.

Q. He advised you of his find? A. Yes.

Q. Had you, prior to that time, made a search for this policy? A. I had not.

Q. Anybody for you?

A. Yes, my son looked through his effects at the office.

Q. Did you find any other policies or anything?

A. We found a policy in his boxes in the vault of the Paulsen Building.

Q. Life insurance policies?

A. Life insurance policies made out to my son.

Q. By the way, do you know what the current premium was on that Standard Accident policy at the time of his death, or just before his death?

Mr. Mack: I object to that as immaterial.

The Court: Objection sustained.

Q. Mrs. Heatfield, did you ever receive "proof of loss" forms from the Standard Accident Insurance Company?

(Testimony of Edna L. Heatfield.)

Mr. Mack: I object to that as incompetent, irrelevant and immaterial under the issues in this case.

The Court: That is specifically admitted by the answer. [151]

Mr. Mack: Yes, that's right.

The Court: In the answer it is specifically admitted these forms were not sent.

Mr. Morey: My question was when, if any, she received forms from the Standard Accident. In other words, the policy provides after they receive notice of loss they should furnish her with forms and if those forms are not furnished within fifteen days then she may furnish her own forms, then this question is intended to be directed to the witness when, if ever, she got those forms from the Standard Accident Company—I think it's justified in showing she submitted her own forms.

The Court: Look in the fourth paragraph of the answer—"More than fifteen days elapsed".

Mr. Morey: That's right—I had forgotten that.

The Court: I will sustain the objection.

Mr. Morey: You may examine.

Cross Examination

By Mr. Mack:

Q. When did you receive the clothes from Smith and Company, you were talking about here?

A. I don't remember the date. A day or two after Mr. Heatfield's body was brought down.

Q. Did I understand you to say that at that time they were wet with sweat?

(Testimony of Edna L. Heatfield.)

A. I didn't say wet, I said stained. [152]

Q. I beg your pardon. And there were other conditions about them in addition to the perspiration that you observed—I thought you said something in addition to that—I really didn't hear it.

A. I said his shirt was stained as if with perspiration around the collar and the neck and down to the shoulders.

Q. What kind of a day was that day in June, 1942?

A. I have heard them say it was a hot day. I couldn't swear to that.

Q. I think you said, Mrs. Heatfield, that you found other policies, or the boy found other policies?

A. Yes.

Q. Did you find any policy yourself?

A. The policies were brought to the house.

Q. Did you find any, yourself, regardless of what the boy brought to you?

A. You mean in addition to what he brought—he didn't bring the policies I mentioned.

Q. Those he found, what did he do with them—let's put it that way.

A. He didn't find any policies—I don't think I said my son found any policies.

Q. You said your son made a search for policies, is that correct?

A. Made a search in the desk, yes.

Q. Mr. Morey: She said her son searched for policies—she didn't say who found the policies in the Paulsen Building, she didn't say it was her son. [153]

(Testimony of Edna L. Heatfield.)

Q. Do you know whether your son found any in his search?

A. I don't know that he did.

Q. Did he ever tell you he found any?

A. I don't know that he did or not.

Q. You don't remember?

A. No, I don't remember.

Q. How do you know that those were payable to him—you say they were all payable to him.

A. Because I signed releases on them.

Q. Were there any accident policies besides this one in question?

A. I believe there were, yes.

Q. I understood you to say there were all life policies?

A. I said we found some life insurance policies.

Q. You say he found them?

A. I didn't say 'he'.

Q. You used the word 'we' instead of 'he'?

A. The policies were brought to me at the house.

Q. Who brought them?

A. Mr. Morey, I believe, I asked him to.

Q. Then there was some in there, is that correct, in addition to what Mr. Selbach evidently gave you. A. Yes.

Q. And there were some of them accident policies.

A. I am not sure if there were any accident policies in the box. [154]

Q. Where did you get the policies you said a moment ago were accident policies?

(Testimony of Edna L. Heatfield.)

A. I said I believed there were other accident policies, I don't know whether they were in the box, I don't remember seeing them in the box.

Q. Did you finally get them?

A. Yes, we finally got one, I know of.

Q. What company was that?

A. The Hartford, I believe.

Q. Was that the Aetna Company?

A. I don't think it is the Aetna.

Q. You had one in the Aetna—was that a life?

A. I didn't have one in the Aetna, my son had one.

Q. And the Illinois-Central Life Insurance Company?

A. I believe that isn't a life insurance company. I don't remember exactly what they were.

Q. You do know some of them were accident policies? A. In the box?

Q. I don't care where they were, please, whether or in the box or not.

Question Read: 'You do know some of them were accident policies'?

A. In the box?

The Court: He said he didn't care whether they were in the box or where they were. [155]

A. Yes, I believe there were two accident policies, but I don't know whether they were in the box or not.

Q. You say Mr. Heatfield was high strung and of rather excitable nature? A. Yes.

(Testimony of Edna L. Heatfield.)

Q. Very noticeable, was it?

A. Well, at times, if anything unusual went wrong.

Q. Do you know what he went to Dr. Myhre for?

A. I believe it was neuritis in his arms.

Q. Did you go with him? A. No.

Q. You said he was what you called a rather muscularly built man. A. Yes.

Q. Weighed 150 pounds? A. Yes.

Q. He never complained to you of heart trouble? A. No.

Q. He never had any, did he?

A. None that I ever heard of.

Mr. Mack: I believe that is all.

(Witness excused.)

Mr. Morey: I will now proceed with the

DEPOSITION OF TOM HEATFIELD,

if your Honor please.

‘Q. Where were those tracks with relation to the other tracks that you have described?

‘A. There were two sets of tracks in evidence; one set was leading off the shoulder of the road, the second set [156] overlapping these was leading back to the road.

‘Q. I have before me five photographs—do you know who took these pictures?

‘A. Yes, sir, I did.

‘Q. When did you take them?

(Deposition of Tom Heatfield.)

‘A. I took two of them on the evening of July 3rd, and the remainder on the day of July 4th.

‘Q. I refer to the first of these pictures (Notary marks picture exhibit A) and ask if this photograph shows any of the marks that you saw at the time of your visit to the scene.

‘A. This photograph shows very clearly the marks made in the loose earth where the car was taken back to the shoulder of the road.

Mr. Morey: This photograph marked exhibit A in the deposition, will be plaintiff’s identification G in this case. I offer in evidence G, the photograph bearing the Notary’s mark exhibit A.

Mr. Mack: I object to it as incompetent, irrelevant and immaterial, not properly identified, no showing where it was taken with reference to any condition apparent in this case.

The Court: The photograph is admitted in evidence. That portion of the answer of the witness which reads ‘the car was taken back to the shoulder of the road’ will be stricken and the Jury instructed to disregard it. The picture will show for itself and the Jury is entitled to determine that question itself. [157]

‘Q. The second photograph to be marked exhibit B. This photograph illustrates the type of highway at that point?

‘A. Yes.

Mr. Morey: I offer in evidence this photograph marked by the Notary ‘B’, and which has been marked in this case as plaintiff’s exhibit H.

(Deposition of Tom Heatfield.)

Mr. Mack: I made the same objection as to exhibit G.

The Court: Objection overruled. It may be admitted.

‘Q. I show you a picture which I am asking the Notary to mark exhibit C. Mr. Heatfield, what does this photograph indicate?

‘A. This photograph also shows the loose earth which was shoveled from the shoulder of the road and the tracks which the car made when returning to the road and it shows the log against which the loose earth was banked to form a track.

Mr. Mack: I move to strike the answer as incompetent, irrelevant and immaterial and an opinion of this witness, and no evidence showing he had any knowledge of where the car was.

The Court: Motion granted and Jury instructed to disregard it. The photograph will speak for itself. The witness is not entitled to say that anything was ‘shoveled’.

Mr. Morey: Now, your Honor, I am [158] offering the exhibit marked C in the deposition and marked plaintiff’s exhibit I in this case.

The Court: It will be admitted subject to the same objection and the same ruling.

Mr. Morey: May I have the exhibit marked D in the deposition marked plaintiff’s exhibit J?

‘Q. Now I show you the fourth photograph which I will ask the Notary to mark exhibit D. Mr. Heatfield, I show you this exhibit D, and ask you

(Deposition of Tom Heatfield.)

if it shows any of the marks that you state you saw?

‘A. Yes. This photograph shows also the loose earth and wheel marks.

Mr. Morey: I offer in evidence this exhibit J.

Mr. Mack: To which we make the same objection as to H, I and G.

The Court: The same ruling—it may be admitted but the answer is stricken except the word ‘yes’. you are entitled to read the word ‘yes’.

Mr. Morey: Now, your Honor, so far as I am concerned, I will not offer any part of page eight, other than we have done. However, for the sake of the record, I am now reading from page 9, commencing with the third line ‘Q. Are there any signs of digging in this photograph?’

Mr. Mack: To which I object as incompetent, irrelevant and immaterial.

The Court: The objection sustained.

‘Q. Mr. Heatfield, do you know whether your Father [159] carried a shovel in his car?

Mr. Mack: I object to that, if your Honor please, because he definitely stated he hadn’t seen his Father since January, 1942.

The Court: That goes to the weight rather than the admissibility. The objection is overruled.

‘A. I know that he very consistently carried a short handled Army type shovel in his car for emergencies.

‘Q. Could you tell how far the dirt which you stated had been dug, had been moved?

(Deposition of Tom Heatfield.)

Mr. Mack: I object to that——

The Court: The objection sustained. You may make your offer—reading from line 10 on page 9—the remainder of the direct examination I will sustain an objection to all of that. I will let you read his last answer on page 10 line 7.

‘Witness: I would like to add that this was very mountainous country and there were few places where a car could leave the road without going down the side of the mountain.’

Mr. Morey: That is the end of the direct examination. I am now offering in evidence, which I forgot to do this morning, plaintiff’s exhibit K which is, ‘E’, in the deposition.

Mr. Mack: I make the same objection.

The Court: The same ruling. It will be admitted. [160]

Cross Examination

By Mr. Mack:

‘How far did you examine this road very carefully to determine the number of places a car could go off?’

‘A. I drove it all the way from Orient to Curlew.

‘Q. How many miles is that?’

‘A. I don’t recall exactly—I think about 22 or 24 miles.

‘Q. But you stated a minute ago you knew where the accident occurred where the accident transpired.

‘A. After I had contacted Don Abrahams, I

(Deposition of Tom Heatfield.)

knew approximately where the accident occurred, yes.

‘Q. Was the contact with Mr. Abrahams before or after you had gone over the 22 to 24 miles?

‘A. It was approximately midway. He was stationed at the summit of the mountain between Curlew and Orient. Prior to talking to Mr. Abrahams I did not know where to look for the scene.

‘Q. Did Mr. Abrahams write anything out for you?

‘A. No.

‘Q. Just what you got from him, he told you?

‘A. Yes.

‘Q. At that time had you located the place in your mind—at the time he told you had you located the place?

‘A. I had never seen the road before. I knew approximately where to look from what he said.

[161]

‘Q. You said you met him about halfway at the particular time you first contacted him.

‘A. Yes.

‘Q. Had you located the place?

‘A. No.

‘Q. Which way were you going?

‘A. I was going west toward Curlew.

‘Q. Then it must have been between the point that you thought your Father had this difficulty and Curlew—where you think it occurred.

‘A. It occurred between this forester’s station and Curlew, that’s correct.

(Deposition of Tom Heatfield.)

‘Q. Who else was with you at the time?

‘A. Fred Rosslow.

‘Q. Where is Fred now?

‘A. I believe he is still at Fort Benning, Georgia, at officers' training.

‘Q. Is he at Fort Benning, Georgia?

‘A. Yes, officers' training.

‘Q. Was he at the officers' training camp at that time?

‘A. No.

‘Q. Hadn't been sent there yet?

‘A. No.

‘Q. Is that the gentlemen who is one of these exhibits?

‘A. Yes, sir. [162]

‘Q. Well, you took two pictures one day and three pictures the next.

‘A. Yes.

‘Q. He with you both times?

‘A. Yes.

‘Q. Where did you stay that night?

‘A. At Republic, Washington.

‘Q. At what particular place?

‘A. At the hotel—I believe the only one in town—I am not sure. I don't know the name.

‘Q. Did you register?

‘A. Yes.

‘Q. What time of the day did you go back the second time?

‘A. Left Republic about 10 o'clock A. M. on the Fourth of July.

(Deposition of Tom Heatfield.)

‘Q. I am calling your attention to exhibit A—what particular marks do you refer to in exhibit A?

‘A. Exhibit A shows the loosely shoveled dirt and shows the wheel mark very distinctly leading back to the shoulder of the road from the ditch.

‘Q. Meaning which particular marks?

‘A. These marks here—leading from the ditch up to the shoulder of the road—that’s a double wheel mark.

‘Q. Where’s the other wheel mark?

‘A. Apparently the back wheel followed the front one through this loose earth.

‘Q. Then that’s the right wheel mark. [163]

‘A. Yes.

‘Q. There’s nothing on there that shows the left wheel mark.

‘A. I believe the left wheel was at all times far enough up on the shoulder of the road.

‘Q. You say you believe that—you went there—

‘A. I didn’t see it there in the ditch.

‘Q. You didn’t see the car there at all did you?

‘Mr. Sugarman: Mr. Mack, you asked him his opinion.

Mr. Mack: I am just asking where the wheel was. What is that, if you know, this mark right across the road (indicating)?

‘A. That’s the shadow of a tree.

‘Q. Whose picture is that—who is the gentleman in the picture?

‘A. That’s Fred Rosslow.

‘Q. I am calling your attention to exhibit B.

(Deposition of Tom Heatfield.)

It was introduced to show the condition of the road?

‘A. Yes.

‘Q. With reference to ‘A’ at what point in the highway was ‘B’ taken?

‘A. May I refer to the object in the picture? This log in exhibit B which appears opposite the front end of the black coupe, is the same one which is in the immediate background in exhibit K.

‘Q. What do you mean? I don’t get the ‘immediate background’. [164]

Mr. Sugarman: Indicating the log behind the figure of Mr. Fred Rossow, in exhibit B, it would be to his left.

‘A. Yes—his left. In other words the pictures were taken at the same spot on the road.

‘Q. There is—calling your attention to B, there isn’t any indentation off the road on B, is there—that appears on it?

‘A. I think it doesn’t appear, at least not clearly in the picture.

‘Q. Where does it appear at all in B; you might point out to me if you think it appears at all in B.

‘A. I think it doesn’t appear, at least not clearly. Picture B is taken from too low a viewpoint to show the tire marks which appeared in exhibit A.

‘Q. The tire mark that appears on exhibit A is unquestionably to the right of the log, to the left of Mr. Rossow, in exhibit A, is it not?

‘A. Yes.

(Deposition of Tom Heatfield.)

Mr. Sugarman: That would depend on which way you were facing.

Mr. Mack: It's to the right—Mr. Rosslow is facing toward the road, is he not?

‘A. Yes.

‘Q. May I again call your attention to exhibit B, please, and to the log which is directly at the end of what you said was the main log in exhibit A, to a log which runs directly opposite of the main log, running on to the [165] road in exhibit B—where is that log in exhibit A?

‘A. It is in front of the foreground of the picture, therefore not appearing in the picture.

‘Q. The stones in the back of the prominent log in exhibit A are the same stones in exhibit B?

‘A. Yes.

‘Where is the log prominent behind the stones in A?

‘A. If I understand your question correctly, you are becoming confused due to the fact that in picture B the angle of the picture does not indicate the distance which actually lies between the log at right angles to the road and the log in question which is more nearly parallel to the road.

‘Q. This main log in A is parallel and is in back of the stones, isn't it?

‘A. Yes.

‘Q. If you observe closely the log on which this log in A lies, it also lies on the same log in B, doesn't it? I will make it clearer, taking A this main log lies on, at least across three other logs.

(Deposition of Tom Heatfield.)

Mr. Sugarman: You are now referring to the log which is next to the highway?

Mr. Mack: Yes.

‘A. Are you still trying to find out why this log in B does not appear in exhibit A?

Mr. Mack: It is not your province to question me. What I want to know is definitely why the log [166] that lies at the end of the prominent log in A which appears definitely to be there in B, is not in B.

‘A. As I answered previously, the angle at which the picture exhibit B was taken does not show the distance which actually lies between the two logs in question. They appear to be almost in contact while actually they are a considerable distance apart.

‘Let me call your attention, then, to this second log in A, which is below, or to the left of the first log. Do you see it, Mr. Heatfield?

‘A. Yes. That log also is below the line of sight in picture B.

‘Q. Then, as I gather it, there were some logs up in the air when you took this picture B.

‘A. Some logs were on higher ground than other logs.

‘Q. The ground before picture B was taken had not been changed any by you or Mr. Rosslow.

‘A. No. Nothing was ever changed by either of us.

‘Q. Calling your attention to exhibit C, which log is that in A, if any?

(Deposition of Tom Heatfield.)

‘A. That log, the most prominent one in exhibit C is also the most prominent one in exhibit A.

Mr. Sugarman: By the most prominent log, we mean the log that runs more or less parallel to the highway and appears to be behind the figure in exhibit A, is that correct?

Mr. Mack: That's right. [167]

‘Q. Exhibit C also fails to show any such log as appears in exhibit B, directly running opposite to exhibit A and at the very bottom of it.

Mr. Sugarman: You are referring now to the log which appears in exhibit B that runs almost at right angles with the picture's margin at the left of the picture.

Mr. Mack: That's right.

‘A. On the contrary, the tip of this log can be seen at a point nearly opposite Mr. Rosslow.

Mr. Sugarman: Mr. Rosslow being the figure in exhibit C.

Mr. Mack: That's right.

‘Q. Mr. Rosslow, in exhibit C, is very much in front of that log that we have been talking about, in front of it.

Mr. Morey: I object to the question as ambiguous, I don't believe we have identified the log in exhibit A as any log that appears in exhibit C.

The Court: Objection overruled.

‘A. Exhibit C illustrates my statement that there was considerable distance between the two logs in question.

Mr. Mack: All objections having been reserved,

(Deposition of Tom Heatfield.)

I am still asking for an answer to my previous question.

‘A. I don’t understand the question—what he means ‘in front of’.

‘Q. You see the only prominent log in exhibit C, [168] do you not, Mr. Heatfield?

‘A. Yes.

‘Q. There is only one prominent log in exhibit C, isn’t that a fact, and that Mr. Rosslow, who was with you is in front of that log, not in back of that log?

Mr. Sugarman: I object. You can’t indicate what the front or the back of a log is. *You* I object on the ground that it is ambiguous.

Mr. Morey: I will waive the objection at this time.

Q. You concede, do you not, Mr. Rosslow was at one end of the log—this prominent log in A?

A. He is not at the end of the log—he is some distance toward the camera from the end of the log.

‘Q. At least he is not in front of that particular log in exhibit A.

‘A. I still don’t understand what you mean by ‘in front of’.

Mr. Sugarman: Mr. Mack, would it help any if the witness were asked as to the front or the rear of the picture? Perhaps that might help.

‘Q. Is not Mr. Rosslow at one end of that log?

‘A. No.

Q. That is, not the end of the log where he is

(Deposition of Tom Heatfield.)

standing—the log extends on and on beyond the place where he is standing in that picture?

‘A. No. He is standing between the camera and the end of the log, let me say the near end of the log. [169]

‘Q. What you call the near end of the log. Examine now, exhibit C, and isn’t he standing exactly at the other end of the log than he was standing at when exhibit A was taken, exactly.

‘A. You mean the opposite end of the log? No he is not.

‘Q. All right. We will just leave it there. I am handing you, please, exhibit marked D. There appears to be three rocks in D—are they the same identical rocks at the end of a log in A?

‘A. Yes.

‘Q. And also, is not the three rocks at the end of the log in E, the particular log closest to the road (indicating), the same rocks?

‘A. Yes, they are.

‘Q. You testified, Mr. Heatfield, if I understood you correctly, that there was considerable—

Mr. Mack: The Court has stricken that answer so I don’t suppose I had better read it.

Mr. Morey: Since Mr. Mack is reading the cross interrogatories, I submit that part of the cross interrogatory should go in the record.

Mr. Mack: These were subject to all objections and if the question goes out—

Mr. Morey: He should not be permitted to use part of it and not all of it.

(Deposition of Tom Heatfield.)

The Court: I didn't strike that particular part. I permitted that question to be answered [170]

'Q. You testified, Mr. Heatfield, if I understood you correctly, that there was considerable—that there was about 500 or 600 pounds of earth removed.

'A. Yes.

'Q. And that was moved from the shoulder of the road. A. Yes.

'Q. By the shoulder, do you mean the top of the road?

'A. Yes. The shoulder of the road is the edge of the flat part of the road.

'Q. And it was moved down toward the lower part of the road? A. Yes.

'Q. Then you took exhibit—referring again to exhibit A, the same log as we have been talking about, and used it as a pry, or something, for some purpose?

'A. No, the log in exhibit A had nothing to do with operations at the scene.

'Q. Did any log in any exhibit A, B, C, or D, have anything to do with the operations, as far as you know? A. Yes, it did.

'Q. Which one?

'A. It is best shown in exhibit C. It appears in the picture as half buried by the dirt banked against it.

'Q. Why doesn't that show in A? Why don't that half buried log show—why, I wonder.

'A. It is just out of the foreground of the picture. [171]

(Deposition of Tom Heatfield.)

‘Q. How much longer picture, further front, would you have to go to show the same thing you say shows in C; how much longer picture?

‘A. Well, I would say that it wasn’t more than three feet out of exhibit A.

‘Q. What’s the reason for leaving it out of exhibit A, if any?

‘A. Exhibit A was intended to show the shoveling operations and the wheel marks of the car, not the log in question.

‘Q. Is, in fact, the log in question?

‘A. I say it was intended to show the shoveling operations and the wheel marks of the car rather than the log in question.

‘Q. How long is the log in question?

‘A. The log in question does not appear in exhibit A.

‘Q. If I understand you, the log is not in exhibit A at all. A. No.

‘Q. Not at all?

‘A. As I said before, I would estimate it was probably about three feet out of the foreground of exhibit A.

‘Q. Calling your attention to exhibit A, tell us what is, in reality, from the picture that you can see, ahead of the foreground as I call it, the pointed end, the small end, which is the end to the left of Mr. Rosslow in that picture; what you see in that picture, if anything—right up [172] here, the small end?

(Deposition of Tom Heatfield.)

Mr. Sugarman: Indicating the extreme rear, the top part of the picture, is that right?

Mr. Mack: That's right.

'A. It appears to be the general background of rocks, logs and brush.

'Q. How far up do you see rocks and brush in the background?

'A. Oh, I would say perhaps two or three hundred feet.

'Q. You are saying now, that that (indicating) is not the end of that particular log? A. No.

Mr. Mack: That is all.

Further Examination By Mr. Sugarman

'Q. Mr. Heatfield, what is your occupation?

'A. I am a field engineer.

'Q. By whom are you employed?

'A. Kaiser Company, Inc.

'Q. You are engaged in the occupation of field engineer right now? A. Yes.

'Q. And at the time you took these pictures and made this investigation, you were a field engineer?

'A. I was a field office engineer at that time.

'Q. Then you are not a photographer, are you?

'A. No.

'Q. What kind of a camera did you use to take these [183] pictures?

'A. They were taken with a 616.

'Q. Kodak or Brownie?

'A. The two pictures on July 3rd, were taken with a Brownie belonging to Fred Rosslow; the pic-

(Deposition of Tom Heatfield.)

tures taken on July 4th were made with my own camera, which is a German make.

‘Q. And now, Mr. Heatfield, do you know anything about perspective?

‘A. Considerable, yes.

‘Q. Do you also know something about viewpoint, do you not? A. I believe so.

‘Q. These pictures were not all taken from the same viewpoint, were they? A. No.

‘Q. For example, exhibit A was taken looking down the road in one direction, is that correct?

‘A. Yes.

‘Q. While exhibit C was taken in the opposite direction? A. Yes.

‘Q. On the other hand, exhibit E was taken from yet another direction, is that correct?

‘A. That’s correct.

‘Q. Facing the road? A. Yes.

‘Q. Now picture, exhibit A, was taken from a high- [174] er elevation than exhibit C, isn’t that correct?

‘A. Yes.

‘Q. It is also taken from a higher elevation than exhibit B, is that correct? A. Yes.

‘Q. When you get down to a lower viewpoint, objects may be hidden behind the foreground, isn’t that correct. A. Yes.

‘Q. That’s exactly what happened in your exhibit B, isn’t that correct?

‘A. That’s correct.

Mr. Sugarman: I think that is all—just a mo-

(Deposition of Tom Heatfield.)

ment—I might ask an additional question. I want to refer to exhibit C, the brush that appears and the logs that appear in the foreground of that picture, referring to the lower region of the picture, are lower, for example, than the large log that runs through the right hand side of the picture, isn't that correct? And, therefore, if they were viewed from the opposite direction, they would be hidden by that large log.

‘A. Yes, from certain viewpoints.

‘Q. Referring still to exhibit C, the earth that appears to the left as we view the picture, of this large log, is higher than the foreground of the picture, is it not?

‘A. I don't know for sure, I believe it probably is. Apparently it is.

Mr. Mack: Just go ahead and read the next question. [175]

Mr. Morey: Further examination by Mr. Mack.

‘Q. Do you know, Mr. Heatfield, whether Mr. Abrahams ever saw your Father at the place that this all occurred—that of course, would be that day.

‘A. I believe he did not.

‘Mr. Mack: That is all.

Mr. Morey: The deposition is signed ‘Tom O. Heatfield’.

Mr. Morey: Plaintiff rests.

Mr. Mack: If the Court please, I have two gentlemen here, two doctors. I don't want to delay them.

The Court: Without waiving any right to make

any motion he may so desire, Mr. Mack may proceed to call the two medical witnesses.

Mr. Morey: That is satisfactory.

The Court: It is understood any motion Mr. Mack desires to make, will be upon the basis of the testimony up to this point.

Mr. Morey: That is satisfactory, your Honor.

[176]

DR. PETER REID

a witness, called for and on behalf of the Defendant, having been duly sworn, testified as follows:

Direct Examination

By Mr. Mack:

Q. Your name is Peter Reid? A. Yes.

Q. What is your profession? A. Physician.

Q. And surgeon? A. Yes.

Q. And reside where? A. Spokane.

Q. How long did you reside here? A. Since 1907.

Q. How long have you been practicing altogether? A. About 35-36 years.

Mr. Morey: We admit the doctor's qualifications.

Q. Where did you get your education, please? A. At the University of Toronto, Canada.

Q. Were you present at the autopsy of Mr. Heatfield, July 10th, 1942? A. I was.

Q. Did you get a report of that autopsy? A. I did.

(Testimony of Dr. Peter Reid.)

Q. Did you watch the autopsy yourself?

A. Yes, sir. [177]

Q. Personally? A. Yes, sir.

Q. Can you tell us who was present at that time, that you recall?

A. Doctor Lewis, Dr. Boyd, Dr. James Cunningham, Dr. Myhre, Mr. Morey, and another man, I don't recall his name.

Q. You think Dr. Myhre was there at that time?

A. Yes.

Q. And Dr. Finney?

A. Yes, and Dr. Snyder did the actual work of the autopsy.

Q. Dr. Finney is now where?

A. Interne at the Deaconness Hospital. And Dr. Snyder is Pathologist there.

Q. Doctor, for about how long did this autopsy take, approximately?

A. I judge it must have taken an hour and a quarter?

Q. That's just your opinion?

A. That is as I recall it now.

Q. What would you say, Doctor, based on that autopsy that you saw, if there was anything developed by reason of it and it alone, was there anything to determine the cause of death of Mr. Heatfield?

A. In my opinion, yes.

Q. From the autopsy itself? A. Yes.

Q. It was the autopsy of Mr. Augustus S. Heatfield? [178] A. Yes.

Q. Doctor, will you please tell the Jury what, in

(Testimony of Dr. Peter Reid.)

your opinion, was in the autopsy that disclosed his death?

A. Well, there was the condition of pathology in the heart which will produce death, angina pectoris. That is a condition we recognize as a heart condition which will cause death. I have seen autopsies of other people and this condition was there in Mr. Heatfield,—coronary artery had become hardened and particularly in this case the left artery, and reduced possibly one-half of what it would normally be. What happens under normal conditions the amount of blood flowing through that artery is sufficient to keep the heart muscle supplied with sufficient oxygen. Under certain conditions, of either severe exertion or rest—I will tell you in a moment where rest produces identically the same condition—if the heart is speeded up as in exertion, more oxygen is required in the muscle of the heart to keep it going and on account of the narrowed lumina of the coronary artery, not sufficient blood goes through and as a result it ends up in spasm of the heart muscle and these people will die from that condition. Now, peculiar as it may seem, absolute rest, as in deep sleep, may cause the identical condition of an attack of angina. When I say attack of angina, I mean this sudden cramping in the heart muscle, and the reason it does that is this—as he goes into sleep respiration becomes more shallow and heart rate falls and there is a certain degree of lack of oxygen entering the heart muscle. There is plenty to keep

(Testimony of Dr. Peter Reid.)

[179] going as long as he remains quiet, or if he wakes up in an hour, perhaps, and turns over, he exercises his muscle which results in bringing sufficient supply of oxygen and it goes on all right. If that man falls into a deep sleep, and we have that occurring right along, the degree of lack of oxygen in the heart gets beyond the danger period. It's quite plenty to keep going as long as he stays in a condition of absolute rest, but if he goes to turn over in his sleep and the heart muscle itself requires a greater supply of oxygen and with any amount of a narrowed lumina in the arteries which supplies that blood so that it can't get it, then it goes into a condition of contraction. Now this man will die from an angina attack sooner, or more likely, than a man who has an angina attack brought on by exercise, because where an attack is brought on by exercise, the first cardinal principle of treatment is to lay him down absolutely at rest, not move a single muscle if he can, and as the breathing becomes deeper and the heart rate becomes slower, he gets sufficient oxygen into the heart muscle and, of course, with morphine to relieve the pain, he begins to revive. The man who has an attack of angina in his sleep, the very condition of absolute rest and prolonged rest in sleep, has been the means of getting him into that condition, therefore, prolonged rest in this man was fatal. He needs a little exercise but the heart is already in spasm and he is the man who dies quickly. Could he get oxygen immediately, he might get better. This is the type of case that die

(Testimony of Dr. Peter Reid.)

at night, and when they get there, he is dead. [180] In this man rest is what threw him into it—with the condition of his heart he was not able to get enough oxygen—

The Court: By 'this man' you mean Mr. Heatfield?

A. Mr. Heatfield had a pathology to produce that identical condition and that's the reason I base my opinion on the fact he died of an attack of angina pectoris.

Q. Is that a disease?

A. No. This comes from two words 'angina' means severe, cramp-like pain, and 'pectoris' means pertaining to the chest. It is simply a question of a disease, where the symptom is of such severity and outstanding, that the symptom has been designated as the disease because the heart condition, the pathology in the heart, will produce this severe, cramp-like pain in the chest, therefore, it is called angina pectoris. Angina pectoris is a symptom, a severe cramp-like pain in the chest, but produced by the pathology of the heart as I just described, sclerosis of the coronary vessels in the heart.

Q. From what you saw there, what is the fact, please, as to whether considerable exercise or any exercise, affected the condition or caused death in this instance?

A. Well, if exercise would influence it at all, the exercise would bring on the attack of angina at the time of the exercise when the need of more blood and more oxygen was necessary in the heart muscle. If

(Testimony of Dr. Peter Reid.)

exercise were responsible for the cause of angina pectoris, it would come on at the time of the exercise and not afterward. [181]

Q. If it come on at the time of the exercise, it would cause death?

A. Then, or soon afterward, if it were severe enough, it could cause death at the time,—there could be an interim, also, between the angina attack coming on and death. If the angina was brought on by the exercise, then it would be continuous from the time the attack came on following the exercise until death resulted.

Q. It would be a continuing state of angina?

A. Yes.

Q. And that means—

A. A terrifically severe pain in the chest.

Q. Is it possible for a patient to withstand that pain?

A. Well, he could withstand it, but he needs all the help he can possibly get, everyone I have ever seen, they ask for it and rightly so, because they have such a fear of constriction in the chest and fear of impending death, all of them, they want all the help they can get.

Q. Then, in the case where a man—assuming, please, he brings on this angina pectoris in the afternoon, around 5, or between 3 and 6 o'clock, and lies down an hour during that time, when, in your opinion, would the angina pectoris be sufficient to cause his death—doing nothing after 6 or 6:30 but rest—do I make myself clear?

(Testimony of Dr. Peter Reid.)

A. No.

Q. Assuming a man sixty-five years of age such as Mr. Heatfield was, and that he had never had any, never [182] done any hard labor, that his business was merely that of traveling solicitor, that he didn't know he had any condition—no difficulty with his heart—that his health had been reasonably good—very good—and that on the afternoon of the 30th day of June, 1942, he found himself off the road in an automobile which he was unable to move, couldn't be moved by himself, and that he then told a lady he had started his engine after he was in that predicament and tried to back his car up and run it forward, that he laid down there an hour, that it was a reasonably hot day, and that about 6:15 another automobile came in the opposite direction and he went out on the highway and motioned to them by waving his hand, to stop them, and did stop them, and they pulled him out; that he looked tired and worn out and that he then went a distance of 2 or 2½ miles and stopped to get a drink of water, and was asked if he wanted anything and he said he didn't think he needed anything, he took the drink of water and walked back to his car, which was a hundred yards, approximately, from the scene where he got the drink of water, and then half an hour afterward he screamed, and they went to him and brought him back to the camp, put him to bed with all his clothes on other than his shoes and his coat, talked to him until about 10 or 10:30 in the evening, and after that, he was found sometime later than

(Testimony of Dr. Peter Reid.)

that—dead—would the exercise I have related—oh I forgot one feature of it—he said to this man at the camp that he had over-exerted himself, would what I have related that he did have anything to do with his dying later in the evening? [183]

A. In my opinion, no.

Q. And you have related why.

A. Yes, sir.

Q. If it did have anything to do with his condition, doctor, when would his death have occurred?

A. His attack would have come on when the need was greatest on the heart, and would have continued. He might have died afterwards, but there would be symptoms of his attack of angina until his death, without any period in between of comparative comfort.

Q. In your opinion, doctor, from the examination, the autopsy and what I have related, the exercise took no part in it whatever.

A. That is my opinion.

Q. Whether he had exercised or not that particular afternoon this condition late in the evening or the next day, would have occurred, death would have occurred in any event?

A. I can't answer that question, but the pathology was there in the coronary artery of the heart so that condition might have happened that night or the next night, or a week afterward, but the condition was there, I mean the coronary artery was sclerosed and hardened and patches of fibrous tissue

(Testimony of Dr. Peter Reid.)

until it was about half the size the coronary artery should be.

Q. And if exercise brought on any condition of lack of blood coming into the heart it would be at the time of [184] the exercise?

A. The time when he required more blood in the heart.

Q. And the man would be in very severe pain?

A. Terrific.

Q. Was there any way to tell from the autopsy just as nearly as you can when this man passed away? A. No.

Q. It would be somewhat of a—

A. It would be just a guess as to when it occurred, during the night, but it was possibly three or four hours afterward when he was pretty tired and sleeping soundly and the slowing down of the pulse rate and slowing down of the respiration until anoxemia brought it to a stage where slight exertion possibly turning over, threw the heart into a spasm.

Q. Due to no exercise in the afternoon whatever. A. In my opinion, no.

Q. Did you observe in this man's autopsy any condition with reference to his aorta?

A. Yes.

Q. What did you observe?

A. Slight hemorrhage between muscle walls of the aorta, but extremely slight and possibly three or four inches away from the heart, but I considered it of very little significance at that place.

(Testimony of Dr. Peter Reid.)

Q. Would the fact there was a slight hemorrhage of the aorta aid in causing this man's death?

A. I don't see how it possibly could. [185]

Q. What was the cause of this hemorrhage, if there was any?

A. You have those hemorrhages coming in the little capillaries, capillary hemorrhages is all they are, in the tiniest blood vessels, sometimes we see them in the skin we find them in different organs but no connection whatever, or no break in the interlining of the vessel between that and the walls of the aorta at all—simply small capillary hemorrhage in this vessel wall.

Q. So in your opinion, his death was due to—

A. Angina pectoris.

Q. And it could have happened at any time?

A. I think so.

Q. And exertion wouldn't cause it?

A. Exertion could cause it—

Q. At the time of his passing on?

A. Not in this case, no.

Q. If it did cause his death in this instance it would have happened—

A. It would have happened when the exercise brought on the attack and that attack would be more or less continuing to the time of his death, whether an hour or four or five hours afterward—the pain continues, and the reason why the man is dying he is not getting over his attack, the heart is still staying in this contraction.

(Testimony of Dr. Peter Reid.)

Q. And all during this time he would be in very severe pain? A. Yes, sir. [186]

Q. What, in your opinion, could a man really do who was in this particular pain?

A. He is absolutely incapable of anything because of the fact the slightest movement makes the condition worse. The more he exercises the more the muscle becomes worse because he will have more and more call for oxygen to supply the heart muscle and more and more spasms continuing to keep him from getting it and he does exactly what we prescribed, absolute rest, can't get him to move a muscle or finger and all of this time he has this terrific sense of constriction about the chest and fear of impending death, incapable of exercising.

Q. Assuming he had this condition coming on by virtue of hard work or over-exertion, would it be possible for him to drive his automobile?

A. According to my opinion, no.

Q. He would have to remain in that particular place?

A. He would remain down on the side of the road and stay there so far as he was concerned.

Q. Would he desire a doctor?

A. In my opinion, he would very much.

Mr. Mack: You may cross-examine. [187]

Cross Examination

By Mr. Morey:

Q. I believe you said you said you attended this autopsy. A. Yes, sir.

(Testimony of Dr. Peter Reid.)

Q. I believe you were employed by the Standard Accident Insurance Company.

A. No, I didn't know that I was—I didn't know what company—Mr. Mack asked me to attend.

Q. You were paid by Mr. Mack?

A. I was paid by the Insurance company, they paid me afterward.

Q. And you were paid by Mr. Mack or the insurance company to attend this trial?

A. Yes.

Q. Now, Dr. Reid, did you examine this body quite carefully? A. Yes, sir.

Q. And did you come to the conclusion that afternoon that Mr. Heatfield had what you now call angina pectoris? A. Yes.

Q. Did you come to that conclusion that afternoon? A. Yes, sir.

Q. Definitely? A. Yes, sir.

Q. Was there any discussion with any of the other doctors who were there? [188]

A. I couldn't answer that, sir.

Q. Do you remember of one of those doctors examining that body make a laughing remark 'well, what did this man die from'?

A. No, I don't think anybody made any laughing remark, I am positive of that.

Q. Now, Mr. Heatfield had some hardening of an artery, or more than one artery?

A. Of the left coronary particularly, not much of the right.

Q. The left coronary artery?

(Testimony of Dr. Peter Reid.)

A. Yes, sir.

Q. Did you go up and examine that artery?

A. I saw it as it was cut, yes sir, I did.

Q. How much hardened was it?

A. It had produced lumena in that area about a half.

Q. Now, how many arteries are there leading to the mio-cardium? A. Two.

Q. You say that was on the left—and now how about the right?

A. There was very little hardening in the right, in fact no discernible hardening.

Q. So that Mr. Heatfield had about a fourth of the ordinary function of his arteries?

A. What do you mean?

Q. About a fourth of the ordinary of function of [189] his arteries.

A. He had three-fourths—he lost a fourth—the one on the right was functioning normally—excuse me for correcting you.

Q. Now, you have examined the bodies of many men of about sixty-five years of age. A. Yes.

Q. And did you not find, Dr. Reid, that the condition of Mr. Heatfield's arteries were about the same as the ordinary man of sixty-five years of age you have examined? A. No, sir, not at all.

Q. You think it was very much worse?

A. The right one was what you might expect, but not the left, positively not.

Q. Now, what he died of, in your opinion, was angina pectoris? A. Yes, sir.

(Testimony of Dr. Peter Reid.)

Q. And that isn't a disease.

A. That isn't a disease—the name angina pectoris isn't a disease as I explained. *It simply*, as I said, a symptom of such severity that it has been taken as the name of a disease.

Q. What did Mr. Heatfield die of?

A. Of a contraction of the heart muscle due to a lack of blood going—

Q. That might be called mio-cardial insufficiency.

A. I don't think so. You have got your terms mixed up. [190]

Q. In what respect is it different?

A. When there has been a degeneration of the muscle until the muscle is not sufficiently strong to carry on, when the muscle is insufficient to carry on the work.

Q. You never heard of mio-cardial insufficiency?

A. Mio-cardial insufficiency is not due to lack of oxygen, it's due to a degeneration of the muscle, possibly from an infected condition or mio-carditis which a man might have had any time.

Q. Would you say that was a contraction of the mio-cardium?

A. That's what happens when there is a lack of sufficient oxygen to keep the heart muscle functioning.

Q. What does it do?

A. It goes into a spasm.

Q. Was there an infarct?

(Testimony of Dr. Peter Reid.)

A. No, sir—in farct will cause a spasm in any muscle whether it is the heart or any place.

Q. When you have this contraction or spasm, you don't get infarct as a result?

A. May I explain, you are getting the Jury mixed up—they don't know what infarct is. That is sometimes called a plugging of the vessel which supplies the muscle. It cuts off the supply of blood and oxygen to the muscle and the muscle goes into a spasm.

Q. Now, doctor, in your opinion Mr. Heatfield died of angina pectoris, or what is the other name?

A. That is the commonly accepted name for it.

[191]

Q. Now those attacks come on frequently when a man is asleep, is that right? A. They do.

Q. Now, doctor, I think you said they come on after a man has been in a long sleep.

A. That would be more likely, to come on if a man had slept for four or five hours than if he had slept for an hour and then waked up and turned over for the simple reason he is awakened before the heart muscle has gotten to the stage of really being in danger of being thrown into a contraction or angina attack. He has turned over and the heart has speeded up, he breathes deeper. It depends on the degree of anoxemia—

Q. What does that mean?

A. Lack of oxygen.

Q. Now, how much of a contraction does a man

(Testimony of Dr. Peter Reid.)

have to have of this coronary artery to get this anoxemia? A. No one knows.

Q. It may be very slight or it may be almost complete?

A. I don't understand the question.

Q. In order to get this anoxemia, is that the condition from which he died when asleep?

A. He died from the result of that, the lack of oxygen, that is what brings on the spasm.

Q. You call that angina pectoris?

A. Yes, sir, when applied to the heart.

Q. Now, how much of contraction of the coronary [192] artery would he have to have in order to bring on this spasm when he dies in sleep?

A. No one could answer that question for you. That depends on a good many factors, on the amount of blood going through an artery, for instance, to a woman's heart which is smaller than a man's and requires less blood to keep it supplied with oxygen than a man who has a larger heart. It depends on the size of the muscle to be supplied, also depends on the amount of exercise a person does, it's all a matter of supply and demand.

Q. What is the other condition you mentioned in which people die? One time you say something about where they sleep for four or five hours, and then there was some other condition.

A. When exercise brings it on.

Q. In other words, angina pectoris takes its toll under two conditions, either the victim is asleep

(Testimony of Dr. Peter Reid.)

for four or five hours, or he has been exercising, one or the other, is that right?

A. That's right.

Q. It never happens unless it's one or the other.

A. Oh, yes, there is another condition; it may happen after a very full meal when what happens is this: he has taken a big meal and there is considerable pressure against the heart, the stomach requires more blood during more digestion than any other time, and that may also reduce the condition of lack of blood going to the heart.

Q. Is pain always a forerunner of angina pectoris? [193]

A. It's always present in angina pectoris.

Q. It has to be?

A. The pain is there whether it has to be or not, it is there.

Q. It's always there?

A. The pain is there always, every case I have ever seen had it.

Q. What kind of pain?

A. A severe, terrifically severe, cramp-like pain.

Q. Now, how long does a man have angina pectoris before he gets some warning of it?

A. Will you repeat that question?

Q. Let me withdraw that question and ask this one. Does a man always have warning of angina pectoris?

A. No. May I answer that a little differently? I believe he does have warning of angina pectoris, but he disregards it. He may have shortness of

(Testimony of Dr. Peter Reid.)

breath. He may have other symptoms in the area of the heart on exercise, but in five minutes it passes away. Now that may be the indications of angina developing.

Q. That's your own personal opinion.

A. Correct.

Q. Your personal opinion is when a man has died of angina pectoris there has been a period of time he has had some other pains in or about his heart?

A. I am just giving my own opinion, my own history of people who have had it, upon questioning them they may not have seen anything, or paid any attention to it [194] but everyone I have ever seen, when I have questioned them closely I have found they were not well. They had some slight pains around their cardial region and have disregarded it because in a few minutes they were gone. That has been my experience.

Q. How long would you say those pains had been lasting in those people?

A. Nobody can answer you that—it varies in different persons—it varies in length of time and it varies with the person himself. One person with a slight pain has been disabled to hear him talk about it—and another person would be rather stoic and disregard it.

Q. These pains come and go for a period of months? A. They may.

Q. They usually do?

A. I say they may, but they may not especially.

(Testimony of Dr. Peter Reid.)

I say the amount of complaining which a person does depends entirely on the person himself. When he gets a little attack he doesn't let one—and someone else may make a great to-do about it.

Q. Let me put it this way—here is a man sixty-five years of age that has never had any pain about his heart, never complained of heart trouble, so far as he is concerned, he has been OK and on one afternoon in June he is alone on this road and his car runs off the road. He is alone and the car is in a tough spot near rocks and logs and one thing and another and the evidence shows that this man did some work to get that car back on the road, just what it [195] was we don't know, but we do know that there has been some dirt shoveled there and we know he has told some people that came along, a lady that came along, he had worked for two hours on that car—and then couldn't get it back on the road, and when these people came along—

The Court: Not that he worked for two hours—that he was there for two hours. He worked for an hour and then was in such condition he had to lie down for an hour.

Mr. Morey: And the kind of work he did was definitely told—

Mr. Mack: He said he moved the car back and forth—

The Court: If you care to make an objection, don't argue to the Jury, make your objection to the Court.

Q. (Continuing) Dr. Reid, you have heard the

(Testimony of Dr. Peter Reid.)

testimony about the history of this man and that when one of these persons came along there he appeared to be worn out—he was holding his hands over the front part of his body—and that about 6:15 he left them and drove about two miles to a camp to get some water, and he went from the camp back to his car then was stretched out on the ground by his car, evidently in agony—

Mr. Mack: I object to that, there is no testimony to that effect—

The Court: When he completes his question you may make your objection. Please don't argue to the Jury [196] all the time.

Q. (Continuing) —he was out by his car and the boys at camp heard a call for help and went out there and they assisted him into his automobile and took him up to the camp. When he got out at the camp he was leaning over in a stooped condition and vomiting, or attempting to vomit, and he was put to bed that night, and died sometime that night. Now, then, Dr. Reid, do you mean to tell this Jury that if it's a fact that that man was doing that amount of work on the automobile, that it had nothing to do with his death, do you mean to tell the Jury that?

A. Yes, sir, I do.

Q. You mean to tell them that had absolutely nothing to do with his death?

A. In my opinion, he did not have an attack of angina at that time for the reason I have already stated to you.

(Testimony of Dr. Peter Reid.)

Q. Is vomiting always a precedent to a fatal attack of angina pectoris? A. No.

A. Vomiting is a thing that may happen in any number of diseases.

Q. No, as a matter of fact, doctor, you don't very often find vomiting before a man passes out with angina.

A. I just finished telling you that isn't a symptom [197] connected with angina. I do say that vomiting is a condition which comes from such a variety of causes it of itself means nothing particularly.

Mr. Morey: That is all.

Re-Direct Examination

By Mr. Mack:

Q. What is the size of the artery through which the blood goes into the heart—the diameter of it?

A. Well, I don't know if I can describe it to you. It varies with different hearts considerably. I don't know how to describe it. But perhaps it's about, well smaller than where the steel stops in a pencil, about that size.

Q. What diameter would that be?

A. Well, I'd have to get down to measuring millimeters to get that.

Q. Now, with reference to the lead in an ordinary pencil.

A. It would be possibly 1/12th of an inch, possibly about that size, just roughly.

Q. In diameter? A. Yes.

(Testimony of Dr. Peter Reid.)

The Court: (Q) From your experience, doctor, how many people out of a hundred die with the first angina attack?

A. Well, your Honor, I can't give you those figures offhand, but quite a number do die even with their first attack; it somewhat depends on how soon some [198] sort of treatment is given to them—I can't get the percent.

Q. I am talking about those who die in their sleep.

A. I can't give you that percentage just now.

Q. Is it large or small?

A. The ones that die wake up out of their sleep, they don't die in their sleep, these people are always awake, they are awakened by the attack but quite a number of them, more of them, die than the ones who have an attack brought on by exercise, that's been my experience.

Q. I am talking about the first attack.

A. I can't give you the percentage of those offhand, no, sir.

Q. Well, is angina a disease which ordinarily, by itself, results in the death of the person attacked? A. No, but it may.

Q. What do you think this man had that afternoon out there?

A. It's rather difficult to say what was the matter with him. To me it was definitely not a distinct attack of angina, or not brought on by the exercise he did, following his exercise.

(Testimony of Dr. Peter Reid.)

Q. The heart trouble he had that afternoon was not angina.

A. It might have been a forerunner, but [199] wasn't a real, distinct, definite case of angina.

Q. Do you feel whatever he had that afternoon was caused by the exertion?

A. That's quite possible because following exertion people very often vomit, over-exertion alone will sometimes do it.

Re-Cross Examination

By Mr. Morey:

Q. These people that die in their sleep from angina, do I understand they have a pain while they are asleep? A. No, not at all.

Q. Do they have a pain when they awaken out of their sleep? A. Yes, sir.

Q. What *would say*, in your experience, how long it is before the person dies?

A. They die very quickly. They are dead usually before we get there.

The Court: (Q) Do you think a man could be sleeping in a room with a number of people, fifteen or twenty feet away from him, wake up with angina and not say anything about it, any signs?

A. I think he did.

Q. How severe is that pain when they wake up?

A. It's a terrific pain, terrible.

Q. Assuming this man we have been talking about, [200] when somebody went to his cot, bunk, the next morning and the covers were not disarranged, would that mean anything to you?

(Testimony of Dr. Peter Reid.)

Mr. Mack: I object to that, your Honor—

The Court: Objection sustained.

The Morey: I thought that was in the evidence.

The Court: There was no testimony as to that.

Q. A man waking up and dying with this angina pectoris, he is apt to be in such pain he is likely to say something about, isn't that true?

A. I would say if he lived long enough he would say plenty, but it depends again on the degree of muscular spasm which has developed in the heart. If an extreme degree, he would die practically the same as with an embolism which plugs the heart entirely.

Q. It would have to be an embolism following angina? A. No, no, before.

Q. But does a man die under these conditions: the arteries are somewhat sclerosed, the man is sixty-five years of ago, and he had had some extra heavy exertion, now then I want to ask you if there is a thing, or maybe I asked you this before, if there is such a thing as mio-cardial insufficiency?

A. Yes, but that is an entirely different disease.

[201]

Q. Does this mio-cardial insufficiency show up in the post mortem?

A. If that is present in the heart, very definitely so, yes, but it is a different condition entirely.

Q. The first time that that condition comes on, I mean the first time that man sixty-five years of age doesn't get enough oxygen to his heart, there is a spasm in the heart muscle. A. Correct.

(Testimony of Dr. Peter Reid.)

Q. If that spasm is enough of a spasm it might cause him to die the first time he had it.

A. It could, yes.

Q. What you say is mio-cardial insufficiency—

A. I refuse to allow you to put that mio-cardial insufficiency to this condition—they are not alike at all.

Q. I know you say they are not, but there is such a thing as mio-cardial insufficiency.

A. Correct.

Q. And a man may die of the first attack?

A. No, because he doesn't have a mio-cardial insufficiency right at the time—that is a process which comes on over a fairly long period of time.

Q. Do you mean to tell me it can't happen—a man cannot die of mio-cardial insufficiency the first time? A. Yes.

Q. You mean it couldn't happen if enough oxygen does not get down into the mio-cardium so as to cause death, is that what you mean? [202]

A. Mio-cardial insufficiency is not lack of oxygen. It's not a term applied to a muscle deprived of sufficient amount of oxygen, it's simply where a muscle is not sufficient, it's lost its tone but it does that over a period of time.

Q. How long a period has to happen before a man passes out? A. No one knows.

Q. It can't happen at the first attack?

A. No, positively not.

Mr. Morey: That is all.

(Testimony of Dr. Peter Reid.)

Q. (By Mr. Mack) Would the fact that Mr. Heatfield after this other car came up to aid him, had his hand on his abdomen signify anything at all? A. It might.

Q. What would it signify?

A. He might have some disturbance there, that is perfectly true.

Mr. Mack: That is all.

Witness Excused. [203]

DR. D. H. LEWIS,

a witness called for and on behalf of the Defendant, having been duly sworn testified as follows:

Direct Examination

By Mr. Mack:

Q. What is your business?

A. Physician and surgeon.

Q. License to practice in the State of Washington? A. Yes.

Q. How long have you been practicing?

A. Thirty-six years.

Mr. Morey: We admit the doctor's qualifications.

Q. You have had, in that time, considerable experience?

A. Thirty-six years of it ought to be enough.

Q. Were you present at an autopsy of Mr. Augustus S. Heatfield? A. Yes.

(Testimony of Dr. D. H. Lewis.)

Q. Besides yourself, do you recall who was present?

A. Dr. Reid, Dr. Snyder, Mr. Morey, Dr.—may I refresh my memory please? (Witness refers to memorandum) Dr. Finney and Mr. Zappone.

Q. And Dr. Cunningham?

A. Yes, James E. Cunningham.

Q. Dr. Boyd? A. Yes.

Q. You watched the autopsy, did you not, yourself? [204] A. Yes.

Q. From beginning to end? A. Yes.

Q. About how long did it take?

A. Those autopsies take from an hour and a quarter to an hour and a half.

Q. It was carefully done? A. Yes, sir.

Q. From the autopsy itself was there anything to show what was the cause of the death of Mr. Heatfield?

A. The definite cause of death, no, no one could tell.

Q. What, in your opinion, did cause the death from what you saw there at the autopsy?

A. He died from natural, senile causes, — in other words, the body just gradually broke down.

Q. What particular causes do you refer to in the body, what particular condition?

A. Well, he had some oedema of the brain and some of the same thing of the lung, he had sclerosis of the right coronary artery, I think it was the right, and he had some sclerosis all over the whole blood stream.

(Testimony of Dr. D. H. Lewis.)

Q. Did you observe the aorta?

A. The aorta had some slight hemorrhages scattering, not out of the ordinary, little capillary bleeding, not a great amount of blood lost. There wasn't a great amount of blood at the autopsy in the aorta.

Q. Did the condition of the aorta itself disclose any other condition showing the aorta might have caused his [205] death? A. No, sir.

Q. Would the fact that he died after 10:30 in the evening—would the fact he had been exercising to the extent of over-exertion, or looked tired and worn out, have anything to do with his death?

A. You couldn't call that a cause of death, no.

Q. Would the fact that this man was sixty-five years of age, you knew that, did you not, and that prior to that time he had been in fairly good health as far as he knew, doing no laborious work, usually traveling in a car or in a train, that about three or a little later in the afternoon his car was off the highway, in an unmovable situation, and that while in that position for an hour or so, with the engine running in the car, he was attempting to back it up and run it forward, and he became tired and weary—that he had stated that he had been attempting to move the car back and forward—that he might have done considerable work to get the car on to the highway—that he looked somewhat exhausted, that he was pulled from the road, that he drove a distance of approximately two miles or a little farther, he stopped and walked a dis-

(Testimony of Dr. D. H. Lewis.)

stance of a hundred yards and asked for a drink of water, he was given a drink of water and asked if he wanted anything and he said no, he went back to the car, he seemingly held his head down, held himself over in a stooped position, walking kind of bent over, and a half hour after getting back to the car he called for help or made some sort of noise or screamed for help, that they came to [206] him and took him back to the camp, put him to bed in his clothes with the exception of his shoes and coat being removed, that it was a hot day, that he talked to them until about 10 or 10:30, and that he died sometime after that—would you say the exercise he did that I have outlined had anything to do with his death?

A. Well, I couldn't say it didn't or I couldn't say it did, but exercise of that type would be apt to have a bearing if there is some diseased condition in his body prior to this exercise you are speaking about.

Q. Did you find any such diseased condition?

A. Only just in a general way. There was no definite pathology in this man's body.

Q. Can you give us a name in your opinion—what in your opinion he died of?

A. Well, most probably the thing he died of was angina pectoris. Now that's a hard thing to prove, I couldn't definitely state he did or did not.

Q. You heard Dr. Reid's testimony?

A. I heard it.

Q. Will you tell us what is meant by myocardial?

(Testimony of Dr. D. H. Lewis.)

A. Mio-cardial of the heart muscle—is a degeneration of the muscle of the heart. It has nothing to do with blood supply.

Q. Does it have anything to do with the oxygen supply?

A. Except that where we find scar tissue in the heart muscle, it doesn't have the elasticity—it's like an [207] old spring which doesn't have the elasticity of a new pair of springs. If you have scar tissue it doesn't have the squeeze to it the normal mio-cardium has.

Q. Is that a process of a number of years?

A. Oh, yes, it can be even from birth.

Q. The fact that a man tries to vomit—does the fact he tried to vomit establish any particular difficulty?

A. Vomiting in any disease is a psychic thing, for instance, you may hurriedly eat a meal, you may get a telegram with bad news, you may become nauseated and vomit, there is nothing wrong with you, it's just a psychic thing—I was going to call it neurotic. In other words, there is no pathology to it.

Q. What is an embolism?

A. It's a blood clot that is carried by the blood obstructing the circulation.

Q. Can an embolism cause death?

A. Oh, yes.

Q. Is the death slow or rapid?

A. Very rapid.

Q. Now, with reference to angina pectoris, do people die in their sleep of that?

(Testimony of Dr. D. H. Lewis.)

A. Let me explain angina pectoris in my way. Angina pectoris is a spasm of the heart muscle. Now, the heart beats rhythmically, it contracts and expands, and so forth, now, if that contraction becomes a spasm and doesn't allow the heart to expand, shuts off all the oxygen to come [208] to that particular blood stream and they die in a very few seconds.

Q. Is that occurrence usually when one is asleep or when awake?

A. It usually comes on them when a person is awake and they die very suddenly.

Q. Does it come on them when they are asleep occasionally? A. Yes, sir.

Q. Could he die quickly in his sleep?

A. It doesn't take very long for that muscle contraction and not expanding—just a few seconds and they are gone.

Q. What is the pain, if any, during—while the patient is awake, affected by this angina pectoris, if any?

A. Angina pectoris ordinarily is a long continued line of pains. Extremely terrific pains. If the spasm is hard enough to hold that muscle right down they die so quickly they don't have any time to yell. One particular thing about angina, they can have all the symptoms over a long period of time and not know it is angina pectoris—call it indigestion, gas pains, liver pains, and so forth.

Q. Those pains under the conditions you have

(Testimony of Dr. D. H. Lewis.)

just announced, are they as terrific as when they really have angina pectoris?

A. When you have a real spasm, it's terrifically painful, no doubt about that.

Q. If the angina pectoris such as you have outlined [209] came would it be brought about by exercise?

A. Of course, no one knows the exact cause of angina pectoris, but we all believe—I believe you can't have an angina unless you have a basic pathology behind it. You can't have an angina pectoris in a normal heart—I don't believe you can.

A. This pain can be removed—something can be done to remove that pain?

A. You can give a dose of morphine is about all I know of, and rest.

Q. And if a person is at rest for about four or four and a half hours, can the angina pectoris take him at that particular time after he has rested for four and a half hours, after he lies down on a cot, for instance?

A. It can. The reason we believe angina causes death at the time of rest is because if a patient hasn't time to kind of bring himself to, to start that heart going again, if you will just take your fist and squeeze your fist down like that (indicating) quite hard for just a few seconds, the fingers become numb and it is pretty hard to straighten them out, and of course the longer you hold them down the harder it is to straighten them out and there will come a time when you can't extend your

(Testimony of Dr. D. H. Lewis.)

fingers at all—that is what we think happens in angina pectoris in the muscle, death comes in a few seconds or minutes.

Q. In this particular autopsy and the outline I have just given to you, in your opinion did the exercise have a thing to do with this man's departing from this life? [210]

A. I couldn't say. I don't know. I don't think so.

Q. Your opinion is it did not.

A. I don't think anything more to do with it than a full meal or a strained bowel movement would have to do with it.

Q. If he died after a full meal or a strain, how long would he live from angina pectoris?

A. If he died from a heart spasm he died right now, I mean from the attack itself. The cause of the attack I don't know how long that would take.

Q. What is coronary occlusion?

A. That is a blocking of the coronary arteries, the arteries that feed the heart itself.

Q. That's a foreign substance, a kind of a blood clot. A. Yes.

Q. And that blocks the artery? A. Yes.

Mr. Mack: You may take the witness.

Cross Examination

By Mr. Morey:

Q. Dr. Lewis, you were employed by one of the insurance companies to attend that autopsy?

A. By Mr. Mack.

(Testimony of Dr. D. H. Lewis.)

Q. I thought you were employed by Crum-packer.

A. Wait a minute now,—I believe he did call me.

Q. You did go down to that autopsy to find out [211] what caused Mr. Heatfield's death.

A. If we could.

Q. That's what you went there for.

A. Yes.

Q. And you have been practicing here in Spokane for quite a long while? A. Yes, sir.

Q. I don't say this with any reflection, you represent insurance companies quite a good bit.

A. Yes, sir.

Q. So when Doctor Lewis went down to that autopsy he went down there intending to do a good job for your client?

A. I went down to find out the fact.

Q. You went down as you always do, to find out the facts. A. Yes, sir.

Q. And while you were down there, for an hour and a half, you did pay particular attention to see what caused Mr. Heatfield's death.

A. Yes, sir.

Q. You went up and looked at that artery?

A. Yes, sir.

Q. And you never saw in there any sclerosis so that it was half its size, did you?

A. Well, neither one was entirely involved, no.

Q. And the right coronary artery was entirely all right, wasn't it? [212]

(Testimony of Dr. D. H. Lewis.)

A. I think it was, the right—

Q. —one was entirely all right. A. Yes.

Q. And the other wasn't sclerosed very much?

A. If I remember about half.

Q. Now, Doctor, you made no diagnosis, if diagnosis is the correct term to use with a man who has passed on, you made no diagnosis of angina pectoris did you? A. No, sir.

Q. Definitely in your own mind, you said to yourself 'that man didn't die of any angina pectoris'.

A. No, I didn't say that. I didn't make a definite diagnosis. There were too many pathological findings here to pin myself to the cause of death.

Q. Isn't it a fact down there that afternoon, you, Dr. Lewis sais 'what did that man die of?'

A. I wouldn't doubt it at all.

Q. You wouldn't say you didn't say that?

A. No.

Q. Because you were very much in doubt what caused Gus Heatfield's death.

A. I am not sure yet what he died of.

Q. Now, you were not able at that time to find anything that caused him to die and you haven't ever been able to find anything that caused him to die. Now, Doctor, tell the Jury what did cause him to die.

A. You might as well ask how long is a piece of rope. That man had a lot of senile change, any one or two [213] or all of them could cause or-

(Testimony of Dr. D. H. Lewis.)

dinary death, and I cannot put my finger on any specific one of them, no I can't.

A. Now then, doctor, when you use the word senile what do you mean in term of years, please?

A. Well, you can't answer. Some men are older at fifty than others at seventy-five. It's a change that goes on in his body. The elasticity of his muscles becomes fibrous, hardened, hardening of the arteries, brain cells not quite so acute, don't walk with a fast step like he used to, don't enjoy his meals like he used to, just ordinary senile changes.

Q. It's somewhat of a relative term—a man might be senile at sixty-five and another senile at fifty?

A. Yes.

Q. You think now that Gus Heatfield just died from senile changes?

A. I don't know what he died of, I can't say.

Q. Well then, so far as your opinion today, you don't know what he died of?

A. He died of that combination, if you are going to pin me down to any one, I can't tell you. I can theorize but that doesn't get very far.

Q. Your best guess is, senile change, a combination of hardened arteries and something else, but a combination of old age changes. Doctor, let me ask you this question, please. Is it just a thing that happens right along, I mean before a man dies of senile change, he just lies down and dies, or is he usually very sick at his [214] stomach?

(Testimony of Dr. D. H. Lewis.)

A. No, as I said a while ago, you can have nausea from a thousand and one different causes.

Q. We are talking about a man dying of senile changes. When you get death from senile changes isn't it a fact you get the history of a man that does gradually peters out?

A. Not necessarily. These sudden deaths we don't know what causes it. Apparently a man is well and fine immediately before. One of our doctors died of hiccoughs.

Q. You would call it an accident?

A. I don't know what you would call that, just a tragedy, that's all. These changes go on just like a pipe in your sink, it becomes gradually plugged up, it works all right, when suddenly the water stops going through, that's senile change.

Q. See if these things are consistent with death by senile change: here is a man sixty-five years of age never heard to complain of any illness, active in business every day, making trips up here in the country, to Colville, and Curlew, and calls on his agents up there at Republic, and everything is fine and dandy, and then he is going over to Colville and somehow or other he gets off the road, he is alone; he evidently does some kind of work trying to get the car back on the road and somebody comes along and gets him back on the road and finds him tired out, worn out, and this man says to this party 'I have been here for about [215] two hours and I got so tired working I had to lie down', and he said to another party there at the

(Testimony of Dr. D. H. Lewis.)

same time 'for the first time in my life I had pains about the heart', and he was holding the front part of his body down here (indicating), and then he got in his car and drove two miles to the forest ranger's camp, and was taken in there, he was sick when he got there, he was put to bed and he died in the night. Now, doctor, that wasn't just death of senile change, was it?

A. I couldn't say the overexertion didn't have anything to do with the death. Nobody can, any more than a full meal eaten hurriedly—I wouldn't say that senility, but take a man of my age, say, I am not as active as I was twenty years ago and I would say if I did that those were the effects I would expect.

Q. With that history of exertion and his death following that, wouldn't you rather say that death was caused by the exercise than say the death was caused simply by senile change.

A. No, I wouldn't want to say.

Q. You don't want to commit yourself on that. What is mio-cardial stenosis?

A. Stenosis is just a narrowing, coronary stenosis is just a narrowing of the coronary artery.

Q. Doctor, isn't it in your opinion a possibility that if a man's coronary arteries are sclerosed to some extent, to the extent we will say you discovered in Mr. Heatfield, isn't it a possibility that if that man does some unusually heavy, hard work that the blood doesn't carry enough oxygen to the

(Testimony of Dr. D. H. Lewis.)

[216] heart muscle for the heart muscle to work and isn't *is* possible that the heart muscle calls out for more oxygen and doesn't get it, the heart muscle just fades out?

A. I wouldn't look for sudden death in that instance. If he had a partial occlusion of one of the coronaries and the other coronary is wide open, you don't expect those things to cause sudden death. There is enough blood going through there to carry enough oxygen for the ordinary body at rest.

Q. Does each artery supply a separate portion of the mio-cardium?

A. One supplies one-half and the other one-half, but inter-related by small capillaries which join them. He could have the left one cut off entirely and put the heart at rest enough the other would supply enough for both.

Q. Doctor Lewis, you said you don't very often have spells of vomiting during an attack of angina pectoris.

A. You can have vomiting with any kind of pain, either physical or mental.

Q. Does angina always have pain?

A. Yes, sir.

Q. You can't have angina without pain?

A. When I am talking about angina pectoris I am talking about a heart spasm, a spasm of the heart. I believe there are certain degrees of angina where you have a pain, when you say the pain is very very extreme—but if you get real angina pectoris, that pain is terrific, nothing like it.

(Testimony of Dr. D. H. Lewis.)

Q. You mean the spasm sufficient to cause a man to pass out. [217]

A. No, he don't always die of angina pectoris.

Q. But if they do they have had a very extreme pain.

A. The pain can be so short and death so quickly he hardly realizes it.

Q. This thing doesn't happen very often when a man is asleep?

A. I haven't seen very many of them.

Witness Excused.

The Court: Have you any other testimony, Mr. Mack?

Mr. Mack: I am resting here.

The Court: Is there any rebuttal?

Mr. Morey: We rest.

The Court: Do you wish to make some argument on your motion?

Mr. Mack: Not a great deal.

The Court: I don't see how you can present your motion with any degree of thoroughness and start your argument this afternoon. I will excuse the Jury until 10:00 o'clock tomorrow morning.

Whereupon: The Jury is excused until 10:00 o'clock A. M., April 16th, at which time, all parties present, the trial was resumed. But before Court was adjourned, the following proceedings were had.

The Court: Are you making this motion as coming at the close of Plaintiff's case?

Mr. Mack: Yes, and I will renew it. Comes now the Defendant in the above entitled action and moves [218] the Court to dismiss the same and to render a verdict for the Defendant for the following reasons:

First: That no notice of any claim for accident was given by the Plaintiff within the twenty days required by the policy, it definitely providing that notice thereof shall be given within the twenty days.

Second: There is no evidence or inference from the evidence that Augustus S. Heatfield had over-exercised, over-exerted or in any manner strained himself whatsoever:

Third: That there is no evidence of death in this case whatsoever by accidental means, or that the same was violent or exclusive of ordinary death.

That the evidence totally fails to establish the cause of death of Mr. Heatfield insofar as the Plaintiff's case is concerned.

That the only evidence in this case as to any accidental means is based upon the admission by this Court of the testimony being on the theory that it is a part of the res gestae, and to be a part of the res gestae it is obligatory that the proof be made by statements of fact and not statements of conclusions, and under the entire record up to this point, the Plaintiff is not entitled to recover.

Whereupon: After argument on the above motion to the Court, the motion was, by the Court, denied and exception allowed.

(Whereupon the Court adjourned to 10:00 o'clock A. M., the following morning for argument to the Jury.) [219]

April 16th, 1943
10:00 A. M.

After argument to the Jury, the Court gave the following instructions:

Judge Schwellenbach: You have heard the testimony and the arguments of Counsel, and it now becomes the duty of the Court to instruct you concerning the issues in the case and the law involved in those issues, and as it is my duty to give you these instructions it is equally your duty to accept these instructions as being the law. As I told you the other day there is a sharp distinction between the work of the Court and the work of the Jury in the trial of a case. We, neither one of us, have the right to infringe upon the scope of the other. I have no right to interfere with your decision on a question of fact. You have no right to interfere with my decision on questions of law. Your work is more important than mine because if I make a mistake, either in the trial or in these instructions, there is a court down in San Francisco that can correct my mistakes. If you make a mistake in passing on a fact, there is not any court who can correct that mistake.

You will consider the instructions as a whole and not place any undue emphasis on any particular portion of them.

You are exclusive judges of what is the evidence in the case and the weight and credit to be given the testimony of each witness. In doing this you may take into consideration the conduct, appearance and demeanor of the witness while testifying; his or her apparent candor and frankness, or the lack of such qualities, if any such lack appears; the reasonableness or unreasonableness of the story told by the witness, its probability or improbability as measured by your common experiences in life, the opportunity or lack of opportunity on the part of the witness of knowing or being informed concerning the matters about which he or she testified, the intelligence or lack of intelligence displayed by the witness, the interest or lack of interest on the part of the witness on the outcome of this case, his bias or prejudice, if any, which would cause him to warp his testimony or color it one way or the other. If you find from the evidence that any witness has wilfully testified falsely to any material fact in the case, then you are at liberty to disregard the entire testimony of such witness except insofar as it may be corroborated by other credible evidence. You must not individually as a Juror, or collective, permit sympathy or goodwill, like or dislike for either party in the action, or passion or prejudice against either party in the action to influence you in arriving at a verdict.

There are cases in which it is necessary to resort to circumstantial evidence. Such necessity inheres in the very nature of things. By circumstantial evidence is meant the inference of the facts in

issue which arise as a natural or logical consequence according to reason or common experience from established collateral or related facts. [221] In order to justify a verdict on circumstantial evidence not directly proving the facts in issue, the circumstances necessarily must be established to the satisfaction of the Jury by a fair preponderance of the evidence, and reaching a verdict on circumstantial evidence is never warranted where the evidence is as consistent with some other conclusion that that contended for by the party introducing the circumstantial evidence.

During the course of this trial each side has presented the testimony of men known as experts, doctors. An expert witness is one who is skilled in one particular matter, being possessed of some particular skill or knowledge concerning the matter under inquiry, by study, observation, practice or experience. Where the testimony of an expert is given as to something that can be seen and observed by any witness, physical objects and their conditions, his testimony is to be viewed as that of any other witness, giving consideration to the particular fitness he may have bearing on the accuracy of the observation on his part over the ordinary person, but in so far as the testimony of an expert is the expression of an opinion based on testimony introduced you must first find from the evidence the facts on which such opinion is based are true. Where a witness testifies as an expert in any particular field and is called to the witness stand and allowed to express an opinion rather than testify as to facts,

those opinions are for aid and assistance to the jury and not for the purpose of invading the functions or province of the jury. Your duty is to evaluate and weigh the testimony of the [222] witness who expresses the opinion precisely as I have outlined to you as to any other witness.

I have permitted the testimony of the young Mr. Heatfield as to certain conditions on the highway at the point at which the plaintiff contends the car of the deceased was off the road. It is admitted that he decided upon the point without the aid of any person who was there at the time the automobile was there, if you should find the car was there. The question of whether you should accept or consider the testimony in Mr. Heatfield's deposition is one solely for your own decision. Unless you find from all the testimony that the young Mr. Heatfield did testify as to the conditions at the same point as that testified to by Mr. and Mrs. Harrington you will not consider his testimony.

The issues are made up of what is known as the pleadings. You will take them with you to the jury room. They are not evidence, but simply a summary of what each party expected to prove when the pleadings were prepared.

The plaintiff's pleadings consist of a complaint, bill of particulars, and the reply. The defendant's pleadings consist of an Answer. In the complaint the plaintiff alleges that during his lifetime and at the time of his death Mr. Heatfield had a certain policy of insurance which was in force and effect at the time of his death. There is no dispute about

that, and no issue concerning it. Plaintiff alleges that she, Edna L. Heatfield, [223] was the wife of Mr. Heatfield, and that she is named as the beneficiary. She brings this suit upon that basis. There is no dispute about those facts. She alleges that he died on June 30, 1942, and there is no dispute about that. Then she sets forth the particulars about the cause of his death, and alleges he died accidentally under the terms and provisions of the policy. Those are denied in defendant's answer. She alleges she complied with the terms of the policy in furnishing proof of loss as required by the policy. That is denied by the answer. And in the answer there are certain affirmative defenses set up which raise the question of the notice of the proof of loss. There is no dispute of the fact, nor is there possible inference to be drawn from the facts concerning notice of proof of loss. Whether or not the notice was a proper notice is purely a question of law and I decided that question. I decided it was a proper notice and proof of loss had been furnished in this case, so far as the affirmative matter contained in the answer and so far as the reply is concerned you need not bother yourselves with them. They simply raised issues of law which have been decided in favor of the plaintiff by me. You, alone, have the right to decide what is the evidence in the case and from such evidence to arrive at your own conclusions concerning the contentions of both sides as to each of the issues which the evidence presents. In reaching such conclusion you are entitled to take into consideration the bur-

den the law places on the plaintiff [224] in a case of this type to sustain her position by a fair preponderance of the evidence, and the expression 'fair preponderance of the evidence' means the greater convincing force or weight of the evidence. It means that which appears to you as the more reasonable and the more probable. It doesn't necessarily mean the greater number of witnesses testifying to or against a given proposition or claimed fact or series of facts, nor does it make any difference on which side the evidence is offered. It means taking all the evidence upon that issue into consideration, no matter which side may have offered it, and the party who has on his side of any particular issue that convincing weight, that proving force, is said to have a preponderance of the evidence in his behalf. If you find the scale equally balanced on any issue then you must decide that issue in favor of the party in whose behalf the evidence is offered. The burden rests on the plaintiff to establish her contention as to the issues which I will now outline to you.

This case presents two issues for the jury to decide. First, what was the cause of death, was it the result of natural causes as contended by the defendant and its witnesses—if so the plaintiff is not entitled to recover. On the other hand if you believe that the plaintiff has sustained the burden of proving that her husband's death was caused by the exertion in attempting to move his automobile, then you will consider the question as to whether such death was accidental as defined [225] by the pol-

icy. At this point I instruct you that the fact the deceased may have had a disease of the heart will not of itself prevent a recovery by the plaintiff in this case. If the disease merely contributes to the death after being preceded by an accident such disease does not prevent recovery under the insurance policy. What the plaintiff must prove in a case of this kind is that the accident was the direct and proximate cause of death. The question is did an accident set in motion a train of events which brought about death without the intervention of any force operating or working from a new and independent source. If you find in this case that over exertion was the direct and proximate cause of the death, your second question was to decide is whether what happened to the assured was accidental within the meaning of the policy. Here, again, the plaintiff has the burden of proof. The policy says that one may only recover if death is effected directly, exclusively and independently of all other causes through accidental means. In interpreting this clause the law is we must consider this from the point of view of the average man. Death by accident means death from an unexpected, something which happened by chance, something unforeseen, extraordinary and unlooked for. An effect which was the natural and probable consequence of an act or course of action is not an accident. It is either the result of actual design or falls under the maxim every man must be held to intend the natural and probable consequences of his deeds. To

be an accident [226] the act must bring about an effect which is not the natural and probable consequence of the means which produced it, an effect which does not necessarily follow. If you find in this case the plaintiff has sustained her burden of proof as to both of these points, first, that the death was caused by over exertion, using the definitions I have given you, and, second, that the death was accidental then your verdict should be for the plaintiff. If you find that the plaintiff has failed to sustain the burden of proof as to either of those two points then your verdict must be for the defendant.

When you retire to your juryroom to consider of your verdict you will select one of your members as foreman who will preside over your deliberations and represent you in further conduct of the case in court. You will take with you the pleadings and the exhibits in the case. It will require the concurrence of the entire jury to arrive at a verdict. You will take with you two forms of verdict, and my reading the one before the other is no indication of any idea I may have about it. The first form is a form for the plaintiff and reads 'We, the jury in the above entitled cause, find for the plaintiff is the sum of \$7500'. This is a case in which the amount is not involved. It is either for \$7500 or nothing.

The other form is 'We, the Jury in the above entitled cause, find for the defendant'. After all of you have concurred upon a verdict unanimously, you

will [227] have the same signed by your foreman who will return it into court in the presence of the entire jury.

Members of the Jury: under the rules of this court it is possible for either counsel to present suggestions about the instructions. These must be presented prior to the time you retire to consider your verdict. Now, they are presented in the absence of the jury so you may now retire but not to consider of your verdict until after Counsel has offered their suggestions.

Whereupon, the jury having retired from the Court room, the following proceedings were had:

Mr. Mack: The case having ended, and the Court having instructed the jury and the jury having not yet retired the defendant excepts to the instruction of the Court with reference to the testimony of Thomas Heatfield, in which the Court permits the jury to determine whether or not his testimony was admissible because he is talking about the same place as Mr. and Mrs. Harrington placed the car. The evidence on the part of Mr. Heatfield definitely shows, first, that the person, Mr. Abraham, from whom he had obtained his location of the car was not at the place where Mr. Harrington was, which is definitely stated in his testimony.

Judge Schwellenbach: The exception is considered and allowed.

Mr. Mack: Additionally there is no testimony of any kind whatsoever to connect the place where Mr. [228] Harrington was, or where Mr. Harring-

ton stated he took pictures with any of the places referred to by Mr. Harrington.

Judge Schwellenbach: Exception considered and allowed.

Mr. Mack: The defendant further excepts to submitting to the jury any question whatsoever with reference to the accident by reason of the defendant's contention it was not accidental. I am not saying the instruction was in error, I merely say—

Judge Schwellenbach: The exception is considered and allowed.

Mr. Mack: That is all.

Judge Schwellenbach: Swear the bailiffs.

Whereupon the jury was returned to the courtroom, and the bailiffs sworn to take charge of same.

Judge Schwellenbach: You may now retire to consider of your verdict. [229]

State of Washington,
County of Spokane—ss.

I, J. J. Cole, Do Hereby Certify that I am the Court Reporter who reported in shorthand the matters and proceedings occurring in the trial of the above entitled cause; that the above and foregoing Statement of Facts is an accurate transcription of the same.

J. J. COLE,
Court Reporter.

[Endorsed]: Filed July 28, 1943. [230]

CLERK'S NOTE:

Plaintiff's Exhibit C, same as Exhibit A to complaint at page 8 of this printed transcript.

Plaintiff's Exhibit D, same as Exhibit B to complaint at page 9 of this printed transcript.

Plaintiff's Exhibit E, same as Exhibit C to complaint at page 11 of this printed transcript. [231]

PLAINTIFF'S EXHIBIT NO. "F"

Deaconess Hospital—Spokane, Washington

Department of Pathology

Record of Necropsy A-68-42

#316

Heatfield, Augustus S.—Age 65 years 9 months

Died: 6-30-42 at 11:45 A. M. near Orient, in Ferry County, Washington Necropsy by Drs. George A. C. Snyder and Joseph B. Finney at Smith Funeral Home, Spokane, Washington at 3:00 p. m. on 7-10-42. Drs. Peter Reid, David H. Lewis, James E. Cunningham, R. G. Boyd, Mr. Harry M. Morey and Mr. F. L. Zappone present.

Anatomic-Pathologic Diagnoses

Acute dilatation of right cardiac chambers;

Acute pulmonary edema;

Periaortic hemorrhage involving upper descending aorta;

Atherosclerosis of aorta and of coronary arteries with atheromatous stenosis of left coronary artery;

Mild pulmonary emphysema;

Multiple petechial hemorrhages of thymic remnants;

Atherosclerosis of cerebral arteries;
Focal cystic encephalomalacia, right globus pallidus;
Mild benign fibroadenomatous hyperplasia of prostate gland;
Diverticulosis of sigmoid colon;
Lymphangiogenic cysts of spleen;
Focal epicardial thickening (so-called "soldier's spot");
Anomalous fissure of upper lobe of right lung;
Alopecia;
Anthracosis of lungs and tracheobronchial lymph nodes;
Multiple postmortem changes and embalming artefacts.

The arterially embalmed body is that of a well developed, well nourished white man past middle age. Body heat and rigor mortis are absent. The face is covered by a heavy layer of embalmer's cosmetic. The scalp hair is absent over the vertex. The eyes and the mouth are closed by the embalmer, and are not examined. There is no evidence of disease or injury visible about the head or the neck. The chest is symmetrical. On the skin of the chest are several flat non-pigmented nevoid lesions. The [232] abdomen is flat. In the abdomen is a post-mortem trocar wound made by the embalmer. The external genitalia show no changes. The extremities contain needle wounds made by the embalmer and there is irregularly

scattered crepitus of the subcutaneous tissues. The fingers and toes show marked dessication and are mummified. Postmortem lividity is not evident and there are no evident changes about the back of the body.

The subcutaneous fat in the usual incision of the trunk in front is moist, yellow and about 1.5 cms thick at the level of the umbilicus. The skeletal musculature is fairly well developed. The subcutaneous tissues show irregular postmortem embalming fixation. The abdominal cavity contains turbid fluid having a strong odor of formaldehyde and the viscera are riddled by postmortem trocar punctures made by the embalmer. The peritoneum is smooth and glistening. The abdominal viscera are normal as to size, position, number and configuration. The mucosa of the urinary bladder shows no changes. In the prostate gland are some small spongy nodules which slightly enlarge its lateral lobes. The mucosa of the rectum and the seminal vesicles show no changes.

The ribs cut readily, revealing an abundance of red bone marrow. The lungs lie free; the thoracic viscera are riddled by postmortem trocar punctures made by the embalmer. The pleural cavities contain a little turbid fluid having a strong odor of formaldehyde. The thymus is largely replaced by fat and in it are some tiny hemorrhages. The pericardia are smooth and shiny. Over the anterior surface of the right ventricle the epicardium shows a small oval area of milky thickening. The

space occupied by the heart is somewhat increased.

When the viscera are turned downward, no changes are seen in the posterior thoracic or abdominal walls. The intima of the descending aorta is mottled by a few atheromatous plaques and shows some hemolysis staining. There is slight hemorrhage, apparently between the media and the adventitia of the upper portion of the descending aorta; this hemorrhage involves chiefly the posterior aortic wall. The aortic intima in the region of this hemorrhagic area is intact however, and no point of origin for aneurysmal dissecting hemorrhage is found. The mucosa of the trachea and of the main bronchi is slightly hyperemic. The tracheobronchial lymph nodes are pigmented grayish to black, but are otherwise unchanged. The pulmonary [233] arteries and veins, and the superior and inferior venae cavae show no changes. The right lung is air-containing throughout. Its pleural surface is smooth and is streaked and mottled grayish to black. There is partial division of its upper lobe into an upper and lower division by a shallow sulcus in it, but this division of the lobe is incomplete; the anomalous sulcus has an horizontal direction. The surfaces made by sectioning the right lung are dry, irregularly reddish, and in many of the pulmonary vessels are clots having the shiny homogeneous appearance typical of postmortem clots. The bronchi show no changes. In some areas the lung parenchyma is slightly emphysematous. The lung parenchyma shows some grayish to black streaking and mottling. The lobes

of the left lung have the usual form and number and its parenchyma resembles that of the right one. The heart weighs 370 gms. The right chambers are dilated, and there is some flattening of the papillary muscles and trabeculae carneae. The tricuspid and pulmonic valves show no changes. The left cardiac chambers show no changes. The leaflets of the mitral and of the aortic valve show slight atheromatous mottling but are flexible and otherwise unchanged. The left ventricular myocardium is of normal thickness but that of the right ventricle is thin and in places does not exceed 3 mms in thickness. The septal myocardium shows no changes. A few atheromatous plaques are present in the ascending aorta, which is otherwise unchanged. The ostia of the coronary arteries are freely patent. Serial sectioning of the coronary arteries reveals eccentric atheromatous thickening of their walls, but in the right coronary artery this produces no appreciable narrowing of the lumen and this vessel is freely patent throughout. The left coronary artery shows narrowing of its lumen by this atheromatous involvement of its wall and in its main trunk and in the proximal centimeter or so of its anterior interventricular branch are some clots which have the homogeneous shiny appearance typical of post-mortem clots. The circumflex branch of the left coronary artery shows slight atheromatous mural thickening, but is not appreciably narrowed and is freely patent throughout. The cardiac foramen ovale is closed. The heart is riddled by trocar

punctures. The adrenal glands show no changes. The kidneys are normal in size and position. Their capsules strip readily, revealing smooth cortical surfaces. They cut readily, revealing no changes other than irregular embalming fixation of [234] their parenchyma. The renal pelvis and the ureters show no significant changes. The gall bladder, the extrahepatic bile ducts, the portal vein and its larger tributaries are unchanged excepting that in the distal portion of the splenic vein is a clot having the shiny homogeneous red appearance typical of a postmortem clot. Serial sectioning of the pancreas reveals no changes in it. The spleen is of average size. Its capsule is smooth. It cuts readily, revealing a firm reddish-gray pulp on a level with its stroma. The lymph follicles are plainly visible. In the spleen just beneath its capsule are some small homogeneous whitish glossy areas. The liver capsule is smooth and transparent. It cuts readily, revealing a parenchyma which shows no changes other than irregular embalming fixation. No changes are found in the esophagus, in the stomach, the duodenum or in the rest of the small bowel. The stomach contains a few macerated raisins. The colon shows no changes excepting that in its sigmoid portions are some small diverticula containing fecal material. No evidence of inflammatory reaction is seen about these.

When the tissues of the scalp are dissected back, no changes are found in them. The calvarium is

unchanged. Then the dura is reflected, there is seen minimal atrophy of the frontal lobes of the brain. The leptomeninges are unchanged. The base of the brain and the cranial nerves are unchanged. There is slight irregular thickening of the vessels forming the circulus arteriosus but these are all patent throughout. Serial horizontal sectioning of the brain reveals no gross changes in it excepting a small cystic area in the right globus pallidus. The brain tissue, especially that of the cerebellum, pons and medulla is poorly fixed by embalming and the brain has a decomposed odor. The base of the skull shows no evidence of recent or of old fracture. No changes are found in the internal or middle ears, in the sphenoid or posterior ethmoid sinuses or in the hypophysis.

The spinal cord and the neck organs are not examined.

Microscopic Examination

Aorta: There is slight intimal thickening and hyaline change but the media shows no changes. In the adventitia there is considerable fresh hemorrhage.

Kidneys: Some of the larger arteries show slight intimal thickening. A few obliterated and hyalinized glomeruli are present but these are not [235] in excess of the number to be expected in an individual of this age. There is marked alteration of staining of the tubular epithelial cells; this is probably a postmorten phenomenon.

Myocardium: Sections from the left ventricle show slight hypertrophy of some of the muscle

cells with areas of replacement of muscle cells by patches of fibrous connective tissue. There is marked narrowing of some of the intramural branches of the coronary arteries by intimal fibrosis and hyaline change. Sections from the right ventricle show slight hypertrophy of a few of the muscle cells and separation of muscle bundles by fat.

Spleen: The sinuses are distended by blood and some of the reticuloendothelial cells contain granular brownish pigment having the characteristics of old hemic pigment. Some of the veins contain typical postmortem clots. The lymph follicles show no changes. In some sections there are subcapsular spaces lined by flattened endothelioid cells and filled by albuminous material.

Hypophysis: The sections show no significant changes.

Adrenal glands: There is focal infiltration of capsules and of the cortex, especially of the zona glomerulosa, by lymphocytes and a few histiocytes. Similar infiltrates are seen also in the medulla and about the central adrenal veins.

Lungs: There is dilatation of some alveoli and many alveoli contain albuminous material which is mixed with blood in some alveoli. The vessels are engorged and in many of them are typical postmortem clots. A small amount of black pigment is deposited in the peribronchial tissues in the usual manner. Some of the bronchi contain albuminous material and blood.

Liver: Excepting for alterations of nuclear staining which are probably postmortem in nature and for some brownish pigmentation of hepatic cells about the central veins, no changes are seen in the sections.

Left coronary artery: There is marked intimal thickening by fibrosis and hyaline change with some calcareous infiltration and narrowing of the lumen by this process. In the lumen is some postmortem blood clot.

Thymus: A considerable amount of thymic tissue remains, but this does not appear to be hyperplastic. There is engorgement of blood vessels with multiple fresh hemorrhages in the thymic tissue and in the fat.

Right globus pallidus: There is a cystic area of old softening with a few scavenger cells in the cyst walls. The blood vessels in the [236] neighborhood of the cyst show no significant changes.

Prostate gland: There is some increase in the prostatic stroma which is irregularly infiltrated by lymphocytes and a few plasma cells. The glandular tissue is slightly increased and the scini are lined by well differentiated epithelial cells.

Pancreas: The only change is marked postmortem autolysis.

GEORGE A. C. SNYDER, M. D.
Pathologist [237]

[Title of Court and Cause—U. S. District Court]

**DEFENDANT'S REQUESTED
INSTRUCTIONS**

Comes now the defendant and requests the Court to instruct the Jury as follows, by giving Instructions I and II attached.

M. E. MACK

Attorney for Defendant

832 Old National Bank

Bldg.

Spokane, Washington.

Service accepted and copy received this 16 day of April 1943

HARRY M. MOREY

Atty for Plaintiff

[Title of Court and Cause—U. S. District Court]

**DEFENDANT'S REQUESTED
INSTRUCTIONS****I.**

The jury is instructed: That before you can give any consideration to the expert testimony admitted in this case, you must find, under the evidence admitted or reasonable inference therefrom, that after the automobile which the deceased was driving had come to a stop in the ditch an accident did occur. There being no evidence admitted as to how this automobile had gotten into said ditch.

Moyer vs. Aetna Life Insurance Co., 126 Fed. 2nd 141.

II.

You are instructed:

That in your deliberations on the verdict in this case you must not, individually as jurors, or collectively as such, permit sympathy or good will, like or dislike for either party to this action, or passion or prejudice for either party to this action, to influence you individually or collectively, in arriving at a verdict in this case.

[Endorsed]: Filed—April 16, 1943

[Title of Court and Cause—U. S. District Court.]

VERDICT

We, the Jury in the Above Entitled Cause, find for the plaintiff in the sum of \$7500.00.

J. E. McGOVERN,
Foreman.

[Endorsed]: Filed—April 16, 1943 [238]

In the District Court of the United States
Eastern District of Washington

No. 316

EDNA L. HEATFIELD,

Plaintiff,

vs.

STANDARD ACCIDENT INSURANCE COMPANY OF DETROIT, MICHIGAN

Defendant

JUDGMENT

This cause came regularly on for trial at the call of the calendar on Wednesday, April 14, 1943, the plaintiff appearing in person and by her attorney, Harry M. Morey, and the defendant appearing by its attorney, M. E. Mack, and a Jury having been impanelled and sworn, the plaintiff introduced her evidence and rested. Whereupon the defendant introduced its evidence and rested, and the Court instructed the Jury, and the Jury, after hearing the arguments of counsel, retired to consider its verdict and later brought in a verdict in favor of the plaintiff to the effect that plaintiff have and recover of the defendant the sum of Seventy-five Hundred Dollars (\$7500.00).

Now, Therefore, it is hereby Ordered, Adjudged and Decreed, that the plaintiff, Edna L. Heatfield, do have and recover of and from the defendant, Standard Accident Insurance Company of Detroit, Michigan, the sum of Seventy-five Hundred Dol-

lars (\$7500.00), together with interest thereon at the rate of six per cent (6%) per annum from the date of the judgment, together with plaintiff's costs and disbursements herein incurred to be taxed by the Clerk in the sum of \$285.97.

Approved, Clerk is directed to enter.

Done in Open Court this 19 day of April, 1943.

L. B. SCHWELLENBACH,
Judge

Presented by

HARRY M. MOREY

Attorney for Plaintiff.

O. K. as to form.

M. E. MACK

Attorney for Defendant.

[Endorsed]: Filed—April 19, 1943 [239]

[Title of District Court and Cause.]

MEMORANDUM OF COSTS AND
DISBURSEMENTS

DISBURSEMENTS

	Amount Claimed	Amount Allowed
Clerk's Fees—Filing fee and judgment fee....	\$ 12.00	\$.....
Marshal's Fees—Service on Insurance Commissioner	.....	.....
Attorney's Fees—Statutory	2.27	.....
Commissioner's Fees	20.00	.....
Master in Chancery's Fees .....	.....	.....
Reporter's Fees	15.00	.....
Miscellaneous Costs—One-half lunch for Jurors	7.10	.....

Atty. fee for taking deposition Heatfield and Selbach	5.00	.....
Notary Fee deposition Tom A. Heatfield.....	21.10	.....
Notary Fee deposition W. T. Selbach	7.50	.....
Witness Fees .....	.....	.....
(Give name, address, number of days of attendance, and mileage)		
Tom A. Heatfield, Richmond, Cal.	2.00	.....
W. T. Selbach, San Francisco, Cal.....	2.00	.....
Ralph Harrington, North of Curley, Wn. (340 Miles) 1 day	54.00	.....
Mrs. Ralph Harrington, North of Curlew, Wn. (340 Miles) 1 day	54.00	.....
Tom Callan, Boyds, Wn. (200 miles) 1 day....	33.00	.....
Lewis Murphy, Republic, Wn. (280 Miles) 1 day	45.00	.....
Dr. W. N. Myhre, Spokane, Wn., 1 day.....	3.00	.....
Dr. Geo. A. C. Snyder, Spokane, Wn. 1 day	3.00	.....
 Total.....	\$285.97	\$285.97

Taxed 4/29, 1943

A. A. LaFRAMBOISE,
Clerk

United State of America
Eastern District of Washington—ss:

Harry M. Morey, being duly sworn, deposes and says: That he is the Attorney for the Plaintiff in the above-entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

HARRY M. MOREY

Subscribed and sworn to before me, this 26th day of April, 1943

(Seal) PHILIP S. BROOKE
Notary Public

To Standard Accident Insurance Company of Detroit, Michigan and to M. E. Mack, Your Attorney:

You will please take notice that on Thursday, the 29th day of April, 1943, at the hour of 9:30 o'clock A. M., application will be made to the Clerk of said Court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

HARRY M. MOREY
Attorney for Plaintiff

Due service of the within and foregoing Memorandum of Costs and Disbursements and notice of the taxation thereof by the receipt of a true copy thereof, hereby admitted in behalf of all parties entitled to such service by the Rules of Court, this April 26, 1943

M. E. MACK
Attorney for Defendant

[Endorsed]: Filed—April 29, 1943 [240]

[Title of Court and Cause—U. S. District Court]

MOTION TO SET ASIDE VERDICT AND
JUDGMENT ENTERED THEREON AND
TO ENTER JUDGMENT IN ACCORD-
ANCE WITH DEFENDANT'S MOTION
FOR DIRECTED VERDICT

Comes now the above named defendant and moves the Court to set aside the verdict of the jury rendered herein and the judgment entered thereon and to enter judgment for the defendant notwithstanding said verdict in accordance with its motion for a directed verdict.

This motion is based upon the records and files herein and upon the following grounds:

I.

That said verdict for the plaintiff is contrary to law.

II.

That said verdict for the plaintiff is contrary to the evidence and that is no evidence or reasonable inference from the evidence to justify the verdict.

III.

That said verdict is contrary to the law and the evidence.

IV.

That the court erred in refusing to direct a verdict for the defendant in accordance with defend-

ant's motion for a directed verdict made at the close of all of the evidence.

M. E. MACK

Attorney for Defendant,
832 Old National Bank Building,
Spokane, Washington.

Service accepted and copy received this 23 day of April, 1943.

HARRY M. MOREY

Attorney for Plaintiff

[Endorsed]: Filed April 24, 1943. [241]

[Title of Court and Cause—U. S. District Court]

MOTION FOR NEW TRIAL

In the event that the motion of defendant to set aside the verdict and the judgment entered thereon in favor of the plaintiff and to enter judgment notwithstanding said verdict for the defendant in accordance with its motion for directed verdict, is denied, but not otherwise, defendant herein moves the court for an order granting it a new trial for the following causes and upon the following grounds materially affecting the substantial rights of the defendant.

I.

That there is no evidence or reasonable inference from the evidence to justify the verdict in favor of the plaintiff, and that the verdict for plaintiff is contrary to law.

II.

Error in law occurring at the trial and excepted to at the time by the defendant in permitting Tom Heatfield to testify with reference to his *claim* location of the deceased's automobile and the conditions surrounding the same, when his evidence definitely established.

- a. That he, prior to the 3rd day of July, 1942, had never been to the place where deceased's automobile was in the ditch.
- b. That he only received his instructions as to locality from one Dan Abraham who also had never been to the place, as shown by the testimony of the said Heatfield.
- c. That instructions so given him did not select any substantial object or any reasonable method of locating the same, his informant stating that it was about eleven miles from Curlew, Washington.
- d. That there is additionally no showing that Dan Abraham knew where the place was. The only persons that knew were Ralph Harrington and his wife, and that any information obtained from Mr. Abraham was hearsay and guess work and what someone else, if anyone, told Mr. Abraham.

III.

Error in law occurring at the trial and excepted to at the time by the defendant in that court instruct the jury.

- a. That notice as provided by the policy was given. [242]

IV.

Error in law occurring at the trial and excepted to at the time by the defendant in the admission of the testimony of Mrs. Ralph Harrington with reference to statements of the deceased, said statements being hearsay, self-serving declarations and not a part of the *Res Gestae*.

V.

Error in law occurring at the trial and excepted to at the time by the defendant in the admission of the testimony of Tom A. Callam in which he was permitted to testify that the deceased said at least three hours after any occurrence and after he had been lying down for at least an hour, and after he had been pulled out of the ditch and after he had driven to the forest camp, the foregoing statement. That the same is not a statement of a fact but a conclusion of the deceased, hearsay, self-serving declaration and not a part of the *Res Gestae*, said statement being, deceased said he over-exerted himself.

VI.

Error in law occurring at the trial and excepted to at the time by the defendant in that the court instructed the jury that they could find from the evidence and reasonable inferences herefrom that an occurrence had occurred and that the deceased could have died from accidental means.

VII.

Error in law occurring at the trial and excepted to at the time by the defendant in that the court

permitted the testimony of Dr. Myra and Dr. E. C. Snyder when there was no evidence upon which it could be based.

M. E. MACK

Attorney for Defendant.

832 Old National Bank Building,
Spokane, Washington

Service accepted and copy received this 23 day of April, 1943.

HARRY M. MOREY

Attorney for Plaintiff

[Endorsed]: Filed—April 24, 1943 [243]

[Title of Court and Cause—U. S. District Court]

MOTION FOR RE-HEARING

Comes Now the Defendant in the above action, and through their Counsel, M. E. Mack, moves the Court to re-hear the Motion for Judgment, setting aside the verdict, and granting judgment in favor of the Defendant, on the record made in the child of this action and a new trial, and shows the Court that at the time of the hearing on said Motions, April 30th, 1943, at 10 o'clock A. M., after Defendant's Counsel had read the transcribed testimony of witness, Floy Harrington, this Court, your Honor, said to Defendant's Counsel, immediately after said testimony had been read: "What you are trying to do is to say that I, meaning your Honor, is bound by the testimony given by her on cross examination." And that

is exactly what Counsel for the defendant unqualifiedly believes the law is and was. She being the only witness produced by the Plaintiff, the Plaintiff was and is bound by a statement made on cross examination which contradicts testimony given in the direct examination, or explains it, or establishes that the testimony given on direct examination was not as established by a combination of both the direct and cross examination.

Paragraph two of the Motion for a New Trial was not at the time, the Court ruled, argued whatsoever, and it was the Counsel's positive intention to call the Court's attention to the error claimed in said paragraph two.

That the error claimed in paragraph five of the Motion for a New Trial was error as contended at the trial and now in the admission of the testimony of Thomas A. Callam, and it was not argued at the time of the aforesaid hearing. And the same is true as to grounds in six and seven of said Motion for a New Trial, as set out in the defendant's Motion.

Supporting authority: 81 L Ed. 557 at 561 Wayne U. S. Gas Co. vs. Owens Illinois Gas Co. 300 U S 131-1-38.

M. E. MACK

Attorney for the Defendant
832 Old Nat'l Bank Bldg.

Service accepted this 6th day of May, 1943.

HARRY M. MOREY

Attorney for the Plaintiff

[Endorsed]: Filed—May 6, 1943. [244]

[Title of Court and Cause—U. S. District Court]

**ORDER DENYING MOTION TO SET ASIDE
VERDICT AND JUDGMENT**

This matter coming on regularly for hearing by the Court on April 30, 1943, on defendant's Motion to Set Aside Verdict and Judgment Entered Thereon, and to enter Judgment in Accordance with Defendant's Motion for Directed verdict, and after hearing said Motion and the argument of counsel, and the Court being fully advised in the premises it is by the Court

Ordered, that said Motion to Set Aside Verdict and Judgment Entered Thereon and to enter Judgment in Accordance with Defendant's Motion for Directed Verdict is hereby denied.

Done in open court this 11 day of May, 1943.

L. B. SCHWELLENBACH,
Judge.

Presented by:

HARRY M. MOREY,
Attorney for Plaintiff.

Approved as to form

M. E. MACK,
Attorney for Defendant.

[Endorsed]: Filed—May 11, 1943

[Title of Court and Cause—U. S. District Court]

ORDER DENYING MOTION FOR NEW
TRIAL

This matter coming on regularly for hearing by the Court on April 30, 1943, on defendant's Motion for a New Trial, and, after hearing said Motion and the argument of counsel, and the Court being fully advised in the premises, it is by the Court

Ordered, that said Motion for a New Trial is hereby denied.

Done in open court this 11 day of May, 1943.

L. B. SCHWELLENBACH,
Judge

Presented by:

HARRY M. MOREY,
Attorney for Plaintiff.

Approved as to form

M. E. MACK
Attorney for Defendant

[Endorsed]: Filed May 11, 1943 [245]

[Title of Court and Cause—U. S. District Court]

ORDER

Now, to-wit: on this 25th day of May, 1943, this matter coming regularly on for hearing on the motion of the defendant for a re-hearing of his motions filed in this Court for an order setting aside the verdict of the Jury, and judgment thereon, and

to render judgment for the defendant, and in the event said motion be denied, for the granting of a motion for a new trial; M. E. Mack, appearing for the defendant, and Harry Morey, appearing for the plaintiff, and the Court being duly advised of said motion for re-hearing thereof of said motions, and being duly advised in the premises:

It Is Therefore Ordered, Adjudged and Decreed that the said Motion for Re-hearing be and the same is hereby denied.

L. B. SCHWELLENBACH,
Judge

M. E. Mack

[Endorsed]: Filed May 25, 1943

[Title of Court and Cause—U. S. District Court]

NOTICE OF APPEAL

Notice is hereby given that the Standard Accident Insurance Company of Detroit, Michigan, a corporation, defendant above named, hereby appeals to the Circuit Court of Appeals, for the Ninth Circuit, from the final judgment entered in this action. Judgment on the verdict of the Jury was entered on the 19th day of April, 1943, and Order denying defendant's Motion to set aside the verdict and enter judgment thereon, and to enter judgment in accordance with defendant's motion for a directed verdict was entered on the 11th day of May, 1943, and an order denying defendant's alternative mo-

tion for a new trial or for judgment notwithstanding the verdict of the Jury, was entered on the 11th day of May, 1943.

M. E. MACK

Attorney for Defendant

Address: 832 Old National
Bank Building, Spokane,
Washington

Service accepted by receipt of copy on this
day of July, 1943

.....

Attorney for Plaintiff

Copy of the above notice of appeal mailed to
Harry M. Morey, Attorney for the Plaintiff, July
10, 1943

EVA M. HARDIN

Deputy Clerk

[Endorsed]: Filed July 10, 1943 [246]

[Title of Court and Cause—U. S. District Court]

SUPERSEDEAS AND APPEAL BOND

Know All Men By These Presents That we, The Standard Accident Insurance Company of Detroit, Michigan, a corporation, defendant above named, as Principal, and Fidelity & Deposit Company of Maryland, a corporation organized under the laws of the State of Maryland, and authorized to transact the business of surety in the State of Washington, as Surety, are held and firmly bound unto

Edna L. Heatfield, complainant above named, in the just and full sum of \$8500.00, for which sum well and truly to be paid, we bind ourselves and our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 8th day of July, 1943.

The condition of this obligation is such that, whereas, the above named complainant on the 11th day of May, 1943 in the above entitled action and court recovered judgment against the above named defendant for the sum of \$7500.00, together with costs; and

Whereas, the above named principal is about to give notice that it appeals from said judgment of the above entitled court to the United States Circuit Court of Appeals, for the Ninth Circuit;

Now, Therefore, if said principal Standard Accident Insurance Company shall pay to Edna L. Heatfield, complainant above named, all costs that may be awarded against it if said appeal is dismissed, or the judgment affirmed, or such costs as said appellate court may award if the judgment is modified, and further if said principal Standard Accident Insurance Company shall satisfy said judgment in full together with costs, interest and damages for delay if for any reason the said appeal is dismissed, or if the judgment is affirmed, and shall satisfy in full such modification of judgment and such costs, interest and damages as the appellate court may ad-

judge and award, then this obligation to be void; otherwise to remain in full force and effect.

STANDARD ACCIDENT INSURANCE COMPANY

By M. E. MACK,

Its Attorney

(Seal)

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

A. B. KALIN,

Attorney in Fact

Approved this 12 day of July, 1943.

L. B. SCHWELLENBACH

United States District Judge

[Endorsed]: Filed—July 12, 1943 [247]

[Title of Court and Cause—U. S. District Court]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Comes now the appellant, The Standard Accident Insurance Company of Detroit, Michigan, a corporation, by its attorney, M. E. Mack, and makes the following statement of the points on which it intends to rely on appeal:

I.

The trial Court erred in denying the defendant's (appellant's) motion for non-suit and for dismissal at the close of plaintiff's evidence, and in denying defendant's motion for a directed verdict at the close of all the evidence, and in submitting the case to the

jury, and in denying defendant's motion to set aside the *the* verdict and judgment for plaintiff and enter judgment for the defendant, and in denying the defendant's motion for a new trial and for judgment notwithstanding the verdict of the Jury, and to set aside the judgment for the plaintiff upon the following grounds:

(a) As a matter of law, there was no proof whatsoever of the death of Augustus S. Heatfield by accidental death or bodily injury affected directly, exclusively and independently of all other causes through accidental means.

(b) That there was no competent evidence whatsoever of any witness, establishing the death or bodily injury affected directly, exclusively and independently of all other causes through accidental means of Augustus S. Heatfield.

(c) That the policy upon which this action was based provides in:

Paragraph D-4 "Written notice of injury on which claim may be based must be given to the Company (defendant) within 20 days after the date of the accident causing such injury."

Paragraph E-5 "And such notice on behalf of insured or beneficiary may be given to the Company at Detroit, Michigan, or to any authorized agent of the Company, with particulars sufficient to identify the insured. Failure to give notice within the time provided in this policy shall not invalidate any claim, if it shall be shown not to have been reasonably possible to

give such notice, and that notice was given as soon as was reasonably possible."

That no notice was given within the said 20 days whatsoever, and no waiver of such notice was plead.

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The policy further provides:

Paragraph "S"—"Full compliance of the insured and beneficiary with all provisions of this policy is a condition precedent to recover hereunder (thereunder) and any failure in this respect shall forfeit to the Company (defendant) all right to any indemnity."

II.

The Court erred in denying defendant's (appellant's) alternate motion for a new trial based upon the matters set forth in Point I, and in admitting the testimony of Floy Harrington and Thomas A. Callam, and overruling the defendant's (appellant's) objection, as their testimony was incompatible, immaterial and irrelevant; self-serving, and not a part of the *res gestae*. Their testimonies both being narrations and not spontaneous and occurring approximately 2 hours after whatever did happen occurred, and there being no proof of any disability whatsoever on the part of the said Augustus S. Heatfield to prevent his having done so any time during said 2 hours, and having had ample time to reflect,—he being an insurance agent.

III.

The Court erred in denying defendant's (appel-

lant's) alternative motion for a new trial in admitting the testimony of the son, Thomas A. Heatfield, as to the locality and the conditions surrounding it, of the place of the alleged occurrence; he not having been there until 3 days after whatever happened did occur, no one that ever was there directing him to the place, and his only informant being a party who had never been to the place.

IV.

The Court erred in denying the defendant's (appellant's) motion for a new trial because of its admitting in evidence, Exhibit No. 1 being the first notice given to the defendant (appellant) 30 days after the injury upon which this action is based, and holding that the same was sufficient, and there being no plea or proof of waiver whatsoever.

V.

The Court erred in denying defendant's (appellant's) alternate motion for a new trial, instructing the jury that due notice in accordance with paragraphs D-4 and E-5 was given, when there was positively no proof to sustain the court whatsoever,—no such notice ever being given until [249] long after the expiration of the time limits in the policy, and no waiver having been plead whatsoever.

VI.

The Court erred in denying defendant's (appellant's) motion for a new trial in admitting testimony of Drs. Myra and E. C. Snyder. There be-

ing no evidence upon which it could be legally based.

VII.

The Court erred in denying the defendant's (appellant's) motion to dismiss the action based on the allegations in the complaint. They being insufficient to establish the death of Augustus S. Heatfield.

VIII.

The Court erred in instructing the jury that the question of notice of accidental injury was withdrawn from their consideration, in other words, that the letter of July 8th, 1942, was sufficient notice to the Defendant.

M. E. MACK,

Attorney for Defendant.

Service accepted by receipt of copy this 17th day of July, 1943.

HARRY M. MOREY,

Attorney for Plaintiff.

[Endorsed]: Filed July 17, 1943. [250]

[Title of Court and Cause—U. S. District Court.]

STIPULATION

Come now the parties above named, plaintiff, Edna L. Heatfield, by her attorney, Harry M. Morey, and defendant, The Standard Accident Insurance Company of Detroit, a corporation, by its attorney, M. E. Mack, and hereby agrees and stipu-

late that the following parts of the record, proceedings and evidence shall be and are designated to be included in the record on appeal, to-wit:

1. Certified transcript of transfer of case to thos Court, containing Complaint.
2. Notice of filing said transcript.
3. Order denying Motion to Dismiss—Said Motion being a part of said transcript.
4. Order denying Motion to Strike—Said Motion being a part of said transcript.
5. Order on Motion to make more definite and certain. Said motion being a part of said transcript.
6. Bill of Particulars.
7. Answer.
8. Reply.
9. Interrogatories.
10. Answer to Interrogatories.
11. Demand for Jury.
12. Defendant's *request instructions*.
13. Verdict of the Jury.
14. Judgment.
15. Cost Bill.
16. Motion for New Trial.
17. Motion to Set Aside Verdict and for Judgment.
18. Motion for Re-Hearing.
19. Order denying Motion for New Trial.
20. Order denying Motion to Set Aside Verdict and for Judgment.
21. Order denying Motion for Re-hearing.
22. Notice of Appeal.
23. Supersedeas Bond on Appeal. [251]

24. Reporter's transcript of all testimony, evidence and proceedings at the trial, including rulings of the Court on the admission and exclusion of testimony, defendant's motion for non-suit and dismissal at the close of plaintiff's evidence, with the Court's ruling thereon, and defendant's motion for directed verdict at the close of all the evidence with the Court's ruling thereon, and the Court's instructions and defendant's objections to the Court's instructions, to be filed according to the rule.

25. All exhibits.
26. Statement of points relied on by appellant.
27. This Stipulation.

Dated at Spokane, Washington, this 17th day of July, 1943.

M. E. MACK

Attorney for Appellant

HARRY M. MOREY

Attorney for Appellee

[Endorsed]: Filed July 17, 1943. [252]

[Title of Court and Cause—U. S. District Court.)

APPLICATION FOR TRANSMISSION OF
ORIGINAL EXHIBITS TO THE CIRCUIT
COURT OF APPEALS

Comes now the plaintiff and defendant above named and moves the Court for an order providing for the safe keeping and transmission of all

the original exhibits to the Circuit Court of Appeals, for the Ninth Circuit, on the ground that said exhibits cannot conveniently or satisfactorily be copied into the record and should be inspected by the appellate court.

This motion is based on the files herein.

M. E. MACK

Attorney for Defendant-
Appellant

HARRY M. MOREY

Attorney for Plaintiff-
Appellee

[Endorsed]: Filed July 17, 1943.

[Title of Court and Cause—U. S. District Court.]

**ORDER FOR TRANSMISSION OF ORIGINAL
EXHIBITS TO THE CIRCUIT COURT OF
APPEALS**

This matter coming regularly on for hearing upon the motion of the plaintiff and defendant for an order to transmit all original exhibits to the Circuit Court of Appeals, and it appearing to the court that said Exhibits cannot be conveniently or satisfactorily copied into the record and that the same should be inspected by the appellate court;

Now, therefore it is ordered that the Clerk of this Court transmit all the original Exhibits to the Clerk of the Circuit Court of Appeals, for the

Ninth Circuit, as and when he transmits the transcript of the record on appeal herein.

Done this 17 day of July, 1943.

L. B. SCHWELLENBACH,

Judge

M. E. MACK OK

Attorney for Appellant

HARRY M. MOREY

Attorney for Appellee

[Endorsed]: Filed July 17, 1943. [253]

CLERK'S CERTIFICATE OF TRANSCRIPT OF RECORD

United States of America

Eastern District of Washington—ss.

I, A. A. LaFramboise, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing typewritten pages numbered from 1 to 247 inclusive, to be a full, true and correct copy of so much of the record, papers and proceedings in the above entitled cause as are necessary to the hearing of the appeal therein in the United States Circuit Court of Appeals as called for by Stipulation of Counsel, as the same remain on file and of record in the Office of the Clerk of said District Court, and that the same constitutes the record on appeal of The Standard Accident Insurance Company of Detroit, Michigan, a corporation, from the final

judgment of the District Court of the United States for the Eastern District of Washington to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, at San Francisco, California.

I further certify that in accordance with the Order of this Court, I transmit herewith the following original exhibits—Plaintiff's Exhibits A, G, H, I, J and K, all being pictures, and Plaintiff's Exhibit B, being Insurance Policy No. C.A.C.—97R 1387.

I further certify that the fees of the Clerk of this Court for preparing and certifying the foregoing record amount to the sum of \$42.75, and that the same has been paid in full by M. E. Mack, Attorney for the Appellant.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid District Court, this 7th day of August, 1943.

(Seal)

A. A. La FRAMBOISE

Clerk of the United States
District Court, Eastern Dis-
trict of Washington

[Endorsed]: No. 10517. United States Circuit Court of Appeals for the Ninth Circuit. The Standard Accident Insurance Company of Detroit, Michigan, a corporation, Appellant, vs. Edna L. Heatfield, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Eastern District of Washington, Northern Division.

Filed August 10, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals of
San Francisco, Ninth Circuit

No. 10517

THE STANDARD ACCIDENT INSURANCE
COMPANY OF DETROIT, MICHIGAN, a
corporation,

Appellant,

vs.

EDNA L. HEATFIELD,

Respondent.

POINTS RELIED ON AND RECORD
TO BE PRINTED

To Clerk of the Above entitled Court—Paul P.
O'Brien

1.

You are hereby notified that the appellant above named hereby adopts as its points on appeal, The Statements of Points appearing in the transcript of the record, in the above Court which was filed by the appellant in the trial court.

2.

That the entire transcript in the above case on appeal received by the above Court from the clerk of the trial court be printed in its entirety.

M. E. MACK

Attorney for the Appellant
832 Old National Bank Bldg.
Spokane, Washington.

Service accepted by receipt of copy on this 16th day of August, 1943.

HARRY M. MOREY

Attorney for Respondent

[Endorsed]: Filed Aug. 18, 1943.